97th Congress }
2d Session }

COMMITTEE PRINT

# A LEGISLATIVE HISTORY OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (SUPERFUND), PUBLIC LAW 96-510

TOGETHER WITH

## A SECTION-BY-SECTION INDEX

PREPARED BY THE

ENVIRONMENT AND NATURAL RESOURCES POLICY DIVISION

OF THE

CONGRESSIONAL RESEARCH SERVICE

OF THE

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FOR THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
U.S. SENATE

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## VOLUME 3 (APPENDICES)

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# APPENDIX I

## ADDITIONAL BILLS

[From the Congressional Record, June 12, 1979, pp. S7444-S7447]

# STATEMENT OF SENATOR JENNINGS RANDOLPH ON INTRODUCING S. 1325

## HAZARDOUS WASTE POST-CLOSURE LIABILITY ACT

● Mr. RANDOLPH. Mr. President, the new Solid Waste Disposal Act subtitle C program for the proper management of the 50 million tons of hazardous wastes produced every year by American industries can never be successful until adequate and acceptable treatment and disposal facilities to properly handle these potentially dangerous wastes are constructed. A recent study by the General Accounting Office concluded:

> Without adequate, environmentally sound disposal and treatment capacity, the intent of RCRA to insure public health and safety cannot be achieved. Adequate capacity is not available to handle the amount of waste generated, and techniques to reduce waste volumes requiring disposal will not alleviate this problem. Attempts to obtain new sites are hindered by public opposition and even existing environmentally safe facilities are jeopardized at a time when volumes of waste are growing.

The 1976 act provides a comprehensive Federal regulatory program which will track wastes "cradle to grave" and assure that the treatment and final disposal facilities satisfy stringent environmental safeguards. The Environmental Protection Agency will insist that the highest standards of today's technology will be employed to safely handle these wastes. While there have been several highly publicized incidents of damage from the mismanagement of these chemical wastes from years past, we can be confident that modern facilities employ techniques unavailable, in many cases, only a generation ago.

Regulations which the Environmental Protection Agency will promulgate late this year will require facilities to use environmentally approved treatment and disposal technology. The regulations will also provide that firms operating such facilities be able to demonstrate the financial ability to pay for any unanticipated damages which, despite the latest technology and the watchful eye of Government regulators, might possibly occur. The currently proposed regulations require firms to have $5 million available for such contingencies.

Firms operating such facilities will also be required to set-aside funds during the operating life of the facility to pay for the routine care and maintenance of the site into the future. But, under the regulatory program as it presently stands, there is a gap in protection to the public because there is no requirement or mechanism to assure that funds will be available to clean up and restore the site in the event of unanticipated environmental contamination which takes place after closure of the site, or to compensate any victims of such an incident. Private mechanisms do not seem to be available to adequately cover this post closure liability. Many firms may choose not to expose themselves to this uncertain risk of great duration and needed facilities may therefore not be built.

That lack of mechanism to deal with postclosure liability should be remedied.

Today I submit legislation to fill that gap and provide a mechanism for accumulating funds during the operating lives of hazardous waste management facilities that will be available to pay damages and liability claims caused by facilities which have been managed in accordance with their permits and operating plans approved by the Environmental Protection Agency or a State agency designated by the Agency to manage the hazardous waste program. The General Accounting Office agrees that such protection is needed, and found that liability insurance is not available to provide this protection.

Initially, the Agency proposed postclosure liability insurance for permitted disposal facilities to protect the public from damages in later years. However, this insurance covered only claims resulting from damages to persons or property, not the costs to correct problem sites or minimize further pollution. This type of insurance, however, does not appear to be available, from private insurers and, even if it were available, the Agency estimates that the premiums would be prohibitively expensive.

In lieu of private insurance, the National Solid Wastes Management Association recommended the creation of an industrywide federally administered trust fund, funded by a surcharge on disposal.

The Comptroller General then recommended "legislation to create a self-sustaining national trust fund, supported by fees assessed on the disposal of hazardous wastes, to cover all postclosure liability and any necessary remedial actions for sites permitted under the act to prevent continued contamination." It is my understanding that the Environmental Protection Agency supports the recommendation, and is preparing a legislative proposal along those lines.

The legislation which I introduce today was developed by the National Solid Wastes Management Association as described in the GAO report. It may not be the final answer, but it has the benefit of solid thinking on this important problem and represents a good point to begin discussions. I endorse the goal and concept of this legislation, while reserving the likelihood that modifications might further refine and improve it.

In particular I have reservations about the bill's provisions for preemption of State liability laws. I do not believe such preemption is desirable or appropriate for hazardous wastes. It is included in this bill for purposes of generating discussion of the concept. It may be appropriate, however, to preempt separate State compensation funds or duplicative fees. I am offering the bill at this time so that the Environment and Public Works Committee might have a suitable vehicle to consider the special needs for postclosure liability for permitted facilites, and the relationship of that problem to adequate waste treatment and disposal capacity.

We will address this matter as we look at the larger problem of liability and compensation for hazardous materials released into the environment and cleanup funds for inactive disposal sites. This will occupy much of the committee's time during the balance of this session.

By providing the fund contemplated in this bill, the Congress would assure property owners in communities with hazardous waste facilities that we recognize that they are, in a sense, being asked to do a thankless job for the rest of society—handling these noxious wastes. Subtitle C says, in essence, take these wastes where they can be properly managed, not dumped down the storm sewer or along the side of the road. This legislation would provide assurance that these wastes can be taken into a regulated facility and if anything should happen to go wrong, there will be a mechanism to keep innocent people from suffering the loss. That is only fair.

I would add a note addressing the fiscal impact of this proposal. The fund which this legislation would create would consist wholly of money assessed against operators of treatment and disposal facilities. No taxpayer dollars are involved. In essence, the fund is a risk pool mechanism to substitute for the lack of available commercial insurance. Its contributions come from those facility operators who operate facilities which have been approved by our regulatory agencies. Only facilities permitted under subtitle C of the Solid Waste Disposal Act will be eligible to participate in the fund.

I ask unanimous consent that the bill text and summary be printed in the RECORD.

96TH CONGRESS
1ST SESSION

# S. 1325

To provide for post-closure liability and compensation for claims arising from discharges from hazardous waste management facilities permitted under subtitle C of the Solid Waste Disposal Act, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 12 (legislative day, MAY 21), 1979

Mr. RANDOLPH introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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# A BILL

To provide for post-closure liability and compensation for claims arising from discharges from hazardous waste management facilities permitted under subtitle C of the Solid Waste Disposal Act, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Hazardous Waste Post-Closure Liability Act".

## DEFINITIONS

SEC. 2. For the purposes of the Act, the term—

(a) "fund" means the fund established by section 4;

(b) "person" means an individual, firm, corporation, association, partnership, joint venture, or governmental entity;

(c) "Secretary" means the Secretary of the Treasury;

(d) "Administrator" means the Administrator of the Environmental Protection Agency;

(e) "hazardous waste incident" means any occurrence or series of occurrences, which results in the discharge of hazardous wastes from a hazardous waste management facility injurious to, or creating an imminent threat of injury to, any person or property;

(f) "hazardous wastes" means any solid waste which meets the criteria established by or is listed by the Administrator pursuant to section 3001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.), or any solid waste, or combination of solid waste, which because of its quantity, concentration, or physical, chemical, or infection characteristics may—

(A) cause, or significantly contribute, to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed;

(g) "claimant" means any person or the Government of the United States or any agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim under this Act;

(h) "hazardous waste management facility" means any facility which stores, treats, or disposes of hazardous wastes pursuant to a permit issued under section 3005 of the Solid Waste Disposal Act (42 U.S.C. 6901, et seq.), or has been certified as properly closed pursuant to section 10;

(i) "person in charge" means the individual immediately responsible for the operation of a hazardous waste management facility;

(j) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator of a hazardous waste management facility;

(k) "discharge" means any emission from a hazardous waste management facility and includes any releasing, spilling, leaking, seaping, pouring, emitting, emptying, or dumping;

(l) "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semisolid or contained gasous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923);

(m) "storage", when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste;

(n) "treatment", when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;

(o) "disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;

(p) "damages" means any monetary sum representing any loss sustained by a claimant to which he is entitled to reimbursement for under this Act, and shall also include any cost relating to compliance with any injunctive relief awarded pursuant to State or Federal common law, statute, or constitution.

### PREEMPTION

SEC. 3. Except as provided in this Act—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof for any damages arising from a hazardous waste incident, and

(2) no person may be required to contribute to any insurance fund or any other fund the purpose of which is to provide compensation to any person or for any claims which are subject to compensation hereunder.

### FUND; ESTABLISHMENT, FINANCING, AND ADMINISTRATION

SEC. 4. (a) There is hereby established in the Treasury of the United States a Hazardous Waste Post-Closure Liability Fund, not to exceed $200,000,000. The fund shall be available to satisfy any claim asserted under this Act and shall be administered by the Secretary as specified in this title. The Secretary may sue or be sued on behalf of the fund.

(b) The fund shall be constituted from the premiums collected by the Secretary pursuant to subsection (c).

(c)(1) The Secretary shall set and collect from the operator of a hazardous waste management facility an annual nationally uniform premium based upon the amount of hazardous wastes received for storage, treatment, transporting, or disposal in the hazardous waste management facility: *Provided,* That wastes for which a premium has already been collected shall be exempt from subsequent premiums.

(2) The Secretary may promulgate reasonable rules and regulations relating to the collection of the premium authorized by paragraph (1) and, from time to time, the modification

thereof. Modifications shall become effective on the date specified therein, but no earlier than the ninetieth day following the date the modifying regulation is published in the Federal Register. Any modification of the premium shall be designed to assure that the fund is maintained at a level not less than $100,000,000 or more than $200,000,000. No regulation that modifies premiums, nor any modification of such a regulation, whether or not in effect, may be stayed by any court completion of judicial review of that regulation or modification.

(3)(A) Any person who fails to pay the premium as required by the regulations promulgated under paragraph (2) shall be liable for the payment thereof and the Secretary is hereby authorized to bring suit in any court of the United States to collect such premiums and may, in addition thereto be awarded interest and costs. Until such premiums are paid in full, such person shall be deemed to have failed to establish financial responsibility as required by this Act and section 3004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.).

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution pursuant to section 3008(d) of the Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.).

(4) The Secretary may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary and the Comptroller General of the United States shall have access to such required material for the purpose of audit and examination.

(d)(1) The Secretary shall determine the level of cash fund required in order to meet current probable obligations of the fund.

(2) The Secretary may invest and reinvest any excess in the fund, above the level determined under paragraph (1), in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the fund shall be credited to and become a part of the fund.

(e) If at any time the moneys available in the fund are insufficient to meet the obligations of the fund, the Secretary shall issue notes or other obligations in the forms and denominations, bearing the interest rates and maturities and subject to such terms and conditions as may be prescribed by the Secretary. Redemption of these notes or obligations shall be made by the Secretary from moneys in the fund. These notes or other obligations shall bear interest at a rate determined by the Secretary, taking into consideration the average market yield on outstanding marketable obligations or comparable maturity. The Secretary shall purchase any notes or other obligations issued hereunder and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purposes for which securities may be issued under that Act are extended to include any purchase of these notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of these notes or other obligations shall be treated as public transactions of the United States.

### DAMAGES COMPENSABLE BY THE FUND

SEC. 5. (a) Claims for damages arising out of a hazardous waste incident which asserted under Federal or State common law, statute, or constitution shall only be asserted under this Act subject to whatever defenses may be available under such law or laws.

(b) During the operation of a hazardous waste management facility and prior to certification of proper closure pursuant to section 10, the fund shall be available to satisfy the amount of a claim which is or may be asserted against an owner, operator, or guarantor pursuant to subsection (a) and exceeds the limitations on financial responsibility set forth in section 6: *Provided,* That, in the event that it can be established that the damages were caused solely by a knowing or willful violation of any Federal, State, or local standard or permit condition designed to protect the environment or public health, the fund may sue and collect from the owner or operator any sums distributed by it pursuant to this Act.

(c) After the operation of a hazardous waste management facility has ceased and following certification of proper closure pursuant to section 10, the fund shall be available to satisfy any amount of a claim which is or may be asserted against an owner, operator, or guarantor pursuant to subsection (a): *Provided,* That, in the event that it can be established that the damages were caused solely by any knowing or willful violation of any term or condition of a certification of closure issued pursuant to section 10, the fund may sue and collect from the owner or operator any sums distributed by it.

## FINANCIAL RESPONSIBILITY

SEC. 6. During the operation of a hazardous waste management facility and until certification of closure pursuant to section 10, the operator of a hazardous waste management facility shall, in accordance with regulations promulgated by the Administrator establish and maintain financial responsibility sufficient to satisfy claims for damages arising from hazardous waste incidents cumulative up to $5,000,000. Financial responsibility may be established by any one, or any combination of the following methods: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any surety bond filed shall be issued by a bonding company authorized to do business in the United States.

### NOTIFICATION

SEC. 7. In addition to any other notice requirement provided by law, any person in charge of a hazardous waste management facility which is involved in a hazardous waste incident, shall immediately notify the Administrator and the Secretary of the incident, as soon as he has knowledge thereof. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person or his employer in any criminal case, other than a case involving prosecution for perjury or for giving a false statement.

### LIABILITY OF THE FUND AND PROCESSING OF CLAIMS

SEC. 8. (1) The Secretary shall promulgate regulations establishing procedures and standards for the appraisal of any claim against the fund. Such standards to the degree practicable, shall incorporate those principles for determining the degree of culpability necessary to substantiate the claim, the persons entitled to damages, and the calculation of the amount of damages all of which have been established under appropriate common law, statute, or constitution.

(2) Prior to the certification of proper closure pursuant to section 10, the fund shall be liable only for damages claimed in excess of the limitations on financial responsibility set forth in section 6. In order to establish the liability of the fund, it shall be necessary for any claimant to:

(a) Either (i) obtain a final judgment against the owner, operator, or guarantor of such facility or (ii) accept any good faith offer of settlement made by such owner, operator, or guarantor up to the maximum limitations of his financial responsibility required under section 6.

(b) In any lawsuit filed against an owner, operator, or guarantor:

(i) Both the plaintiff and defendant shall serve the Secretary with all papers filed in the case including pleadings, motions, and briefs.

(ii) Either party may interpledge the insurance fund and the fund may intervene in the action as a matter of right.

(iii) If the parties have properly notified the Secretary of the commencement of any such lawsuit, the fund shall be liable for any amount of any judgment in excess of the maximum amount of financial responsibility required by section 6, regardless whether the fund was made a party to the lawsuit or not. In the event of any proposed settlement between the claimant and the owner, operator, or guarantor up to the maximum limitations of financial responsibility required under section 6, the fund shall not be liable for any amount of damages claimed in excess thereof unless the fund (whether or not it has been made a party to any lawsuit) has been notified of the offer of settlement by both the claimant and the owner, operator, or guarantor making the settlement offer and the fund has concurred with the settlement.

(3) Following certification of proper closure pursuant to section 10, the fund shall be directly liable for any claim for any amount of damages compensable under this Act, whether or not a claim for such damages is first filed with the owner, operator, or guarantor of the hazardous waste management facility involved in the hazardous waste incident. Suit may be brought in the proper court directly against the fund: *Provided,* That the owner, operator, or guarantor of the hazardous waste management facility involved may intervene as a matter of right.

## JURISDICTION AND VENUE

SEC. 9. (a) JURISDICTION.—The district courts of the United States have exclusive jurisdiction regardless of the amount of controversy for any action brought under this Act against the fund, any owner, operator, or guarantor of any hazardous waste mnagement facility for damages arising from any hazardous waste incident.

(b) VENUE.—Actions brought against an owner, operator, or guarantor of an affected hazardous waste facility shall be brought in the United States court for the judicial district in which such owner, operator, or guarantor shall have its principal place of business or where the hazardous waste incident giving rise the claim occurred.

## CERTIFICATION OF PROPER CLOSURE AND CLOSURE FUND

SEC. 10. (a) The Administrator shall promulgate regulations requiring each owner or operator of a hazardous waste management facility to establish and maintain a fund sufficient to cover any costs incurred in the proper closure of the facility and any post-closure maintenance, cleanup, or monitoring necessary to as sure that no hazardous waste incident occurs at that facility.

(b) Prior to the permanent closure of a hazardous waste management facility, the owner or operator shall notify the Administrator. At any time after the receipt of the notice of closure, but prior to the third year following closure, the Administrator shall inspect the hazardous waste management facility and should he determine that the facility has been closed in compliance with the Solid Waste Disposal Act and that there is no substantial risk of a hazardous waste incident occurring at the facility, he shall certify that the facility has been properly closed. The certification may contain whatever conditions the Administrator considers reasonably necessary to protect human health and environment including but not limited to restrictions upon the future use of the real property upon which the hazardous waste facility is located. Should these conditions or restrictions be violated by misconduct within the privity of knowledge of the owner or operator or where the owner or operator fails or refuses to provide all reasonable cooperation and assistance requested by a responsible Federal official, including access to the property for cleanup and removal of any hazardous waste incident, he shall be liable for any claims under this Act without any limitation.

(c) Any such certification or denial thereof shall become final unless, no later than fifteen days after the certification or denial the owner or operator, or any interested party files a request for a hearing pursuant to sections 556 and 557 of title 5 of the United States Code. Final decisions of the Administrator made under this subsection shall be reviewable pursuant to section 702 of title 5 of the United States Code, in the district courts of the United States.

[From the Congressional Record, June 12, 1979—Continued]

## HAZARDOUS WASTE POST-CLOSURE LIABILITY ACT

### SUMMARY

The Resource Conservation and Recovery Act of 1976 established the first federal program to control the tremendous amount of hazardous wastes produced and discarded by society. The regulations developed under that Act, which set strict performance and operational standards for hazardous waste storage, treatment and disposal facilities, are the first line of defense against future environmental damage resulting from inadequate handling of hazardous wastes.

Development of stringent regulations above, however, is not the full solution to the problems of hazardous waste. There remains a need both—

To develop an adequate number of environmentally safe facilities for the management of hazardous wastes, and

To assure that, should there be any discharge of hazardous waste, there will be money available to compensate for any damages caused.

In response to these needs, the National Solid Waste Management Association has proposed a "Hazardous Waste Post-Closure Liability Act," to create a Fund which would be available to hazardous waste management facilities which have received proper permits, during operation of the facility, to cover all damages beyond the first $5 million, which must be paid by the facility operator, after proper closure of the site, to pay for all damages.

### HOW THE FUND WORKS

The Fund is created entirely with funds paid by disposal facilities through an annual assessment from each facility which treats, stores or disposes of hazardous waste, based on the quantity of waste handled. Each waste stream is subject to the surcharge only once: If payment is made while the waste is in storage, the premium is not paid again when the waste is transferred to a disposal facility. No public monies go into the Fund.

All damages awarded by the Court will be paid without limit. If, at a particular time, the total amount in the Fund is less than the amount needed to compensate for claims, the Secretary of the Treasury shall issue interest-bearing notes to generate the revenues necessary to pay the established claims. These notes will be redeemed by future monies paid into the Fund.

The law would establish a certain dollar ceiling on the Fund. When the Fund reaches that amount, premiums will not be assessed until the Fund is used, and the balance falls below a certain level. If it becomes apparent that the annual premiums are too low to maintain an adequate reserve in the Fund, the premium can be adjusted by administrative regulations. Regardless of the amount in the Fund, however, all damages will be paid with funds assessed against disposal facility operators.

The Fund is the only mechanism through which a person can be compensated. The Act would preempt duplicative state laws. Such state funds would be totally unnecessary since the Fund would compensate all injured parties and pay all remedial expenses for site clean-ups if such are necessary.

### WHAT OWNERS/OPERATORS OF HAZARDOUS WASTE FACILITIES MUST DO

A Hazardous waste facility can only operate if it receives a permit as specified in the subtitle C regulations. Only permitted facilities are eligible to participate in the Fund.

During operation of the facility, the Fund is available to pay for claims asserted against the facility above $5 million. The owner/operator is responsible for the first $5 million; in order to receive his permit, he must demonstrate his ability to pay that amount through evidence of insurance, guarantee, surety bond, or self-insurance. The $5 million financial responsibility level reflects the level set in proposed EPA regulations to implement the more confined financial responsibility sections of Section 3004.

Before a facility can receive a permit to begin construction, the owner/operator must establish a plan for its eventual closure which complies with the closure requirements outlined in the regulations. When the operator wants to close the facility, he advises the U.S. EPA or authorized state, and after completing the requirements for closure, the designated official agency may award the facility a certificate of proper closure. Once the facility is "properly closed," the Fund is available to pay all the damages which a court identifies as due an injured party.

Of course, if the damage done during or after closure results from his willful violation of regulations, the owner/operator remains fully liable for all costs and the Fund may recover any disbursements from the offending party.

### HOW CLAIMS ARE PROCESSED

The Secretary of the Treasury will develop regulations which will spell out procedures for appraising the merits of claims against the Fund. These regulations will address

What is necessary to substantiate a claim,
Who is entitled to damages, and
How to calculate the amount of damages to be awarded.

To establish the liability of the Fund, the claimant must

Obtain a final judgment against the owner or operator, or
Accept any good faith settlement offer made by owner or operator to the $5 million limit of his responsibility.●

# THE ADMINISTRATION BILL

Introduced, by Request, by Senator John C. Culver, et al. (S. 1341), Representative Harold T. Johnson, et al. (H.R. 4566), and Representative Harley O. Staggers, et al. (H.R. 4571)

96th Congress, 1st Session - - : - - - House Document No. 96–149

# OIL, HAZARDOUS SUBSTANCES, AND HAZARDOUS WASTE RESPONSE, LIABILITY, AND COMPENSATION ACT OF 1979

## COMMUNICATION

FROM

## THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A DRAFT OF PROPOSED LEGISLATION TO AMEND THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED, AND THE SOLID WASTE DISPOSAL ACT, AS AMENDED, TO PROVIDE A SYSTEM OF RESPONSE, LIABILITY, AND COMPENSATION FOR RELEASES OF OIL, HAZARDOUS SUBSTANCES, AND HAZARDOUS WASTES, TO ESTABLISH A RESPONSE AND LIABILITY FUND, AND FOR OTHER PURPOSES

JUNE 13, 1979.—Referred to the Committees on Interstate and Foreign Commerce, Merchant Marine and Fisheries, and Public Works and Transportation and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
39–011 O WASHINGTON : 1979

THE WHITE HOUSE,
*Washington, June 13, 1979.*

Hon. THOMAS P. O'NEILL, Jr.,
*Speaker of the U.S. House of Representatives,*
*Washington, D.C.*

DEAR MR. SPEAKER: Today I am transmitting legislation to address some of the most significant environmental and public health problems facing our Nation. The problems which the legislation is designed to address are extremely serious. Recent months have focused public attention on a series of past improper hazardous waste disposal incidents such as the tragedy of Love Canal, New York. This case clearly demonstrates the unacceptable costs of improper hazardous waste disposal which may accrue from other incidents such as:

Contamination of surface and ground waters including drinking water supplies;

Staggering financial costs of cleaning up and containing wastes; and

Acute poisoning, carcinogenicity, mutagenicity, and promotion of miscarriages and birth defects.

The proposed legislation is a comprehensive program with the financial responsibility shared by Federal, State and local governments as well as industry. For spills of oil or hazardous substances, the legislation establishes a comprehensive and uniform system of notification, emergency response, enforcement, liability and limited economic compensation for such incidents. For uncontrolled sites, the proposed legislation would establish essentially the same program but without economic compensation. This comprehensive program would be implemented by:

Requiring notification of spills and the presence of uncontrolled hazardous waste disposal sites;

Empowering the Federal Government to clean up and mitigate pollution in those incidents where the liable parties do not respond adequately or cannot be quickly identified;

Enforcing higher standards of care in the handling of oil, hazardous substances and hazardous wastes including recovery from liable parties of governmental response costs and economic compensation;

Providing compensation for the economic damages sustained by innocent victims of spills.

The States have a significant role in implementing this legislation. Although the proposed legislation authorizes Federal action in emergency situations, the States are expected to provide financing for both the short-term and long-term containment of releases from hazardous dumpsites.

The legislation provides a major innovation in the manner we approach environmental rehabilitation. In particular, those elements of the private sector which produce hazardous chemicals will share, along with the Federal and State governments, in the financial responsibility for meeting the goals of the legislation through a system of fees.

The legislation provides for a mid-term evaluation. Within three years of enactment a report will be submitted to the Congress which would include experience to date in implementing the legislation; the extent, if any, of the critical uncontrolled sites problem; projected funds required for spill response; extent of State participation; and recommendations for statutory modification in such areas as fee structure, fund operation, liability limits, and financial responsibility limits.

It has become abundantly clear over the past several months that exposure of humans and the environment to dangers from spills of oil, hazardous substances and hazardous wastes and from releases at uncontrolled hazardous waste disposal sites are two of the most pressing environmental problems facing the Nation. I believe that the proposed legislation represents a comprehensive and effective approach for protecting people and the environment from such incidents. I am hopeful that this proposal will receive prompt consideration and speedy enactment. The health of the public and the environment cannot afford less.

Sincerely,

JIMMY CARTER.

**A BILL To amend the Federal Water Pollution Control Act, as amended, and the Solid Waste Disposal Act, as amended, to provide a system of response, liability, and compensation for releases of oil, hazardous substances, and hazardous wastes, to establish a response and liability fund, and for other purposes**

*Pe it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "Oil, Hazardous Substances, and Hazardous Waste Response, Liability, and Compensation Act of 1979."

SEC. 2. Section 7003 of the Solid Waste Disposal Act, as amended, is further amended by striking "is presenting" and inserting in lieu thereof "may present" and by striking "the alleged disposal" and inserting in lieu thereof "such handling, storage, treatment, transportation or disposal".

SEC. 3. Subtitle G of the Solid Waste Disposal Act, as amended, is further amended by adding the following new section:

"SEC. 7010. For purposes of administering or enforcing Subtitle C or Section 7003 of this title, the Administrator or the Attorney General of the United States, as appropriate, may by subpoena require the attendance and testimony of witnesses and production of reports, papers, documents, answers to questions and information that the Administrator or the Attorney General deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the Courts of the United States. In the event of contumacy, failure, or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof."

SEC. 4. The Federal Water Pollution Control Act, as amended, is further amended by adding at the end thereof the following new title:

## "TITLE VI—OIL, HAZARDOUS SUBSTANCES, AND HAZARDOUS RESPONSE, LIABILITY, COMPENSATION, AND FUND

### DEFINITIONS

SEC. 601. For purposes of this title, the term—

(a) "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(b) "Administrator" means the Administrator of the United States Environmental Protection Agency;

(c) "barrel" means forty-two United States gallons at 60 degrees Fahrenheit;

(d) "claim" means a demand in writing for a sum certain;

(e) "containment" means those least cost actions consistent with eventual permanent remedy, taken in the event of a release or significant threat of release from an uncontrolled hazardous waste disposal site to prevent or minimize the release of hazardous substances as defined in section 601(o)(3) so that they will not migrate to cause substantial danger to present or future public health or safety, or to a significant environmental resource. The term includes, but is not limited to such on-site actions as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, clean-up of released hazardous substances, recycling or reuse, diversion, destruction, segregation of reactive wastes, the replacement of leaking containers, collection of leachate and runoff, on-site treatment, and the monitoring to ensure that such actions protect the public health or safety, and the environment. The term does not include off-site transport of hazardous substances, storage, treatment, destruction, and/or redisposal off site except as provided in subsection (b) of section 603;

(f) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(g) "emergency assistance" means actions up to a cost of $300,000 which the Administrator in his discretion determines must be immediately taken in the event of a release or the significant threat of a release from an uncontrolled hazardous waste disposal site to prevent, minimize, or mitigate the release of hazardous substances as defined in section 601(o)(3) so that they will not cause substantial danger to present or future public health or safety, or to a significant environmental resource. The term includes, but is not limited to, security fencing; provision of temporary alternative water supplies; temporary evacuation of threatened individuals not otherwise provided; and transportation, storage, destruction, or treatment and redisposal off site of hazardous substances where the Administrator determines that, due to the seriousness of the danger which may be created by the physical, chemical, or biological properties of the substances and the potential for human exposure, or the unavailability of on-site methods for preventing or minimizing the danger, such off-site actions are essential to protect the public health or safety or a significant environmental resource. The term also means any one or more of the following: (1) planning to determine the feasibility of containment; (2) monitoring and surveys to define the release or threat of release, the hazardous substances involved, and the danger to public health, safety, or the environment; (3) engineering, architectural, legal, fiscal, or economic investigations; and (4) studies, investigations, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions to provide for emergency assistance, containment, and recovery of the costs of emergency assistance and containment.

(h) "environment" means the environment within the United States and the environment which may be affected by pollution as defined in section 601(bb) of this title;

(i) "Executive" means the head of any Federal department, agency, or administration to whom the President of the United States delegates or assigns any of the powers or responsibilities granted by this title;

(j) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(k) "fund" means the fund established by section 606 of this title;

(l) "gross negligence" means the failure to use even slight care, accompanied by a disregard for the consequences that may ensue from the act;

(m) "groundwater" means water in a saturated zone or stratagem beneath the surface of land or water, and any other water used as a source of public drinking water;

(n) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

(o) "hazardous substance" means (1) any substance designated pursuant to section 311 of this Act prior to the effective date of this title, (2) any substance designated pursuant to section 602(a)(2) of this title; and (3) any waste (A) having the characteristics identified in or (B) listed pursuant to section 3001 of the Solid Waste Disposal Act, as amended;

(p) "inland oil barge" means a non-self-propelled vessel, certificated to carry oil in bulk as cargo and certificated to operate only on the inland waters of the United States while operating in those waters;

(q) "inland waters of the United States" means the United States portion of the Great Lakes and those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside that baseline which are a part of the Gulf Intracoastal Waterway;

(r) "internal waters" means waters lying inside the baseline from which the territorial sea is measured, as recognized by the United States;

(s) "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas;

(t) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(u) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(v) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States, but does not include an uncontrolled hazardous waste disposal site or any facility which has qualified for interim status or received a final permit under Subtitle C of the Solid Waste Disposal Act, as amended;

(w) "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party;

(x) "owner or operator" means (1) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (2) in the case of an onshore facility, an offshore facility or an uncontrolled hazardous waste disposal site, any person owning or operating such facility or site, and (3) in the case of any abandoned offshore or onshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(y) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, State municipality, commission, political subdivision of a State, or any interstate body;

(z) "petrochemical feedstock" means liquid or gaseous hydrocarbon used primarily for the preparation of more complex chemicals, i.e., ethylene, propylene, butylenes, butadiene, butanes, benzenes, toluene, xylenes naphthalene, carbon black, and methane other than that used to make ammonia.

(aa) "petroleum oil" means petroleum, including crude petroleum or any fraction or residue therefrom;

(bb) "pollution" means oil or a hazardous substance other than a hazardous waste as defined in section 601(o)(3) of this title—

(1) released from a vessel or an onshore facility in violation of subsection (b) of section 602 of this title; or

(2) released from a vessel engaged in any segment of the movement of oil loaded at the terminal facilities of the pipeline authorized by the Trans-Alaska Pipeline Authorization Act, as amended by this Act (43 U.S.C. 1651 et seq.) for transportation to a port under the jurisdiction of the United States, and released from that vessel prior to being brought ashore in such a port; or

(3) in or on the territorial sea, internal waters, or immediately adjacent shoreline, of a foreign country, in a case where damages are recoverable by a foreign claimant under this title; or

(4) in or on the waters of the high seas which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States;

(cc) "public vessel" means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(dd) "refinery" means a permanently situated facility, located in the United States, which receives crude petroleum oil for the purpose of refinement;

(ee) "release" includes, but is not limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, or dumping into the environment, but excludes (1) discharges in compliance with a permit under section 402 of this Act, (2) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act and subject to a condition in such permit, (3) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems, (4) releases from a hazardous waste treatment, storage, or disposal facility in compliance with any interim status standards promulgated by the Administrator under Subtitle C of the Solid Waste Disposal Act, as amended, or any final permit under said Act, (5) any release in compliance with a permit issued under section 102 or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, and (6) any injection of fluids authorized under applicable underground injection control programs pursuant to Part C of the Safe Drinking Water Act, as amended;

(ff) "removal costs" means (1) costs incurred under subsections (a) or (e) of section 603 of this title; section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974, as amended by this Act and (2) other costs of reasonable measures taken after an incident resulting in the release or threatened release of oil or a hazardous substance to prevent, minimize, or mitigate damage from that incident, but does not include costs of emergency assistance or containment;

(gg) "remove" or "removal" refers to the cleanup or removal of released oil or hazardous substances from the environment, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or safety, or to the environment, which may otherwise result from a release or threat of release;

(hh) "ship" means either of the following types of vessel constructed or adapted primarily to carry oil or hazardous substances in bulk as cargo in the cargo spaces;

(1) a self-propelled vessel, or

(2) a non-self-propelled vessel which is not an inland oil barge;

(ii) "strict liability" or "strictly liable" means liability for the release of oil or a hazardous substance as defined in this title regardless of negligence, knowledge, good faith, intent, surrounding circumstances, degree of care, or any reasonable precautions;

(jj) "supplier" means any person who either produces, manufactures, or imports petrochemical feedstocks or inorganic elements and compounds and either provides, through sale or any other means, these feedstocks or elements and compounds to other persons, or uses those feedstocks or elements and compounds himself;

(kk) "uncontrolled hazardous waste disposal site" means any natural or man-made facility or site of any kind located in, on, or under, any land or waters within the United States which has been or is being used, in whole or in part, for the storage of hazardous substances as defined in section 601(o)(3) (A) or (B) of this title, or for the retention, disposal, deposit, injection, placing, or treatment, or dumping of hazardous substances, but does not include any facility which is subject to regulation under Subtitle C or D of the Solid Waste Disposal Act, as amended;

(ll) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction;

(mm) "United States Claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim;

(nn) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

### PROHIBITED RELEASES, NOTICES, PENALTIES

SEC. 602. (a)(1) The Congress hereby declares that it is the policy of the United States that there should be no releases of oil or hazardous substances into the environment.

(2) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than those referred to in section 601(o) (1) and (3) of this title, such elements and compounds which, when released in any quantity into the environment, may present substantial danger to the public health or safety, or to the environment.

(3) The Administrator shall by regulation determine for the purposes of this title those quantities of oil and any hazardous substances as defined in section 601(o) (1) and (2) of this title, the release of which may be harmful to the public health or safety, or to the environment.

(b) The release of oil or hazardous substances, other than hazardous wastes as defined in section 601(o)(3) (A) or (B) of this title, either into or upon (1) land, (2) groundwater, (3) the navigable waters of the United States or the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, and under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), in such quantities as may be harmful, as determined by the Administrator under subsection (a)(3) of this section, is prohibited, except (1) in the case of such release of oil into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), where permitted under the International Convention for the Prevention of Pollution of the Sea by Oil, 1954. as amended, or other international agreement to which the United States is a party and which is intended to replace that Convention, or (2) where permitted in quantities and at times and locations or under such circumstances or conditions as the Executive may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(c)(1) Any person, including, for purposes of this paragraph, any agency or department of the United States Government, in charge of a vessel or any public vessel owned by the United States or a State or political subdivision thereof or an onshore facility or an offshore facility shall, as soon as he has knowledge of any release of oil or a hazardous substance from such vessel or facility in violation of subsection (b) of this section, immediately notify the appropriate agency of the United States Government of such release.

(2) Any person—

(A) in charge of a vessel from which oil or a hazardous substance is released in violation of subsection (b) of this section into or upon the navigable waters of the United States, adjoining shorelines, or unto or upon the waters of the contiguous zone, or

(B) in charge of a vessel from which oil or a hazardous substance is released in violation of subsection (b) of this section in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(C) in charge of an onshore facility or an offshore facility from which oil or a hazardous substance is released in violation of subsection (b) of this section, who fails to notify immediately the appropriate agency of the United States

Government as soon as he has knowledge of such release shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both.

Any person subject to criminal penalties for failure to provide notice of a release pursuant to this subsection who fails to do so shall not be entitled to the limitation of liability set out in subsection (c) of section 604 of this title. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(d)(1) Within 90 days of the effective date of this Act, or, if regulations have not been promulgated at that time under sections 3001 and 3004 of the Solid Waste Disposal Act, as amended, within 180 days of promulgation of such regulations, any person who may be subject to liability for an uncontrolled hazardous waste disposal site under subsection (b) of section 604 of this title shall notify the Administrator of the existence of such site, specifying the amount and type of any oil or hazardous substances to be found there, and any known, suspected, or likely releases of such substances from such site. The Administrator may prescribe the manner and form of the notice and the information to be included. Any such person who knowingly fails to notify the Administrator of the existence of any such site shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person who fails to provide the notice required by this subsection shall not be entitled to the limitation of liability set out in subsection (c) of section 604 of this title or the defenses to liability set out in subsection (d) of section 604 of this title.

(2) Following provision of notification of the existence of an uncontrolled hazardous waste disposal site under paragraph (1) of this subsection, any person who, pursuant to section 604(b) of this title, may be liable for a release or threat of release of oil or a hazardous substance from the site who takes action to remove, mitigate, or lessen the likelihood of a release or threat of release shall, in the event of such release or threat of release be entitled to subtract from any amount for which he may be liable under that section that portion of the costs of such actions as the Administrator may approve as reasonable and appropriate. *Provided*, however, that nothing contained in this paragraph shall in any way be deemed or interpreted to limit or affect any liability such person may have to any other party as a result of the release or threat of release.

(3) After the effective date of this Act, it shall be unlawful for any person required to provide the notification of an uncontrolled hazardous waste disposal site set out in paragraph (1) of this subsection knowingly to destroy, mutilate, erase, dispose of, conceal or otherwise render unavailable or unreadable any records relating to the site or any hazardous substances contained or deposited therein. Any person who violates this paragraph shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

(e)(1) Any owner, operator, or person in charge of any onshore facility or offshore facility from which oil or a hazardous substance is released in violation of subsection (b) of this section shall either be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense or, in the case of releases of hazardous substances, be subject to a civil action under paragraph (2) of this subjection. Any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is released in violation of subsection (b) of this section into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters, of the contiguous zone, and any owner, operator, or person in charge of a vessel from which oil or a hazardous substance is released in violation of subsection (b) of this section in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, shall either be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense or, in the case of releases of hazardous substances, be subject to a civil action under paragraph (2) of this subsection. No penalty shall be assessed unless the owner or operator shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other security satisfactory to such Secretary.

(2) The Administrator, taking into account the gravity of the offense, and the standard of care manifested by the owner, operator, or person in charge, may, after consultation with the Secretary of the department in which the Coast Guard is operating, commence a civil action against any such person subject to a penalty under paragraph (1) of this subsection for the release of a hazardous substance to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business, the gravity of the violation, and the nature, extent, and degree of success of any efforts made by the owner, operator, or person in charge to minimize or mitigate the effects of such release. The amount of such penalty shall not exceed $50,000, except that where the United States can show that such release was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge, such penalty shall not exceed $250,000. Each violation is a separate offense. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing

business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under paragraph (1) of this section.

(3) Civil penalties shall not be assessed under both this section and section 309 of this Act for the same release.

(4) Any costs of removal incurred in connection with a release excluded by section 601(ee) (1), (2), (3), (4), (5), or (6) of this title shall be recoverable from the owner or operator of the source of the release. The Administrator is authorized to commence a civil action for such costs in the district court of the United States for any district in which the owner or operator is located or resides or is doing business, and such court shall have jurisdiction to order the payment of the costs and to grant any and all other appropriate relief. Any moneys received by the Administrator pursuant to this paragraph shall be deposited in the fund.

### EMERGENCY RESPONSE, ACTION TO REMOVE OR MITIGATE, NATIONAL CONTINGENCY PLAN, JUDICIAL RELIEF

SEC. 603. (a)(1) Whenever any oil or a hazardous substance is released or there is (A) a substantial threat of such a release into the environment, or (B) a release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the Executive is authorized to act to remove or arrange for the removal of such oil, hazardous substance, pollutant, or contaminant at any time, unless he determines such removal will be done properly by the owner or operator of the vessel or onshore facility or offshore facility or uncontrolled hazardous waste disposal site from which the release occurs.

(2) For the purposes of this subsection, the terms "release" and "released" shall include the discharge, release, and injections excluded by items (1), (2), (3), (4), (5), and (6) of section 601(ee) of this title, as well as all other releases included in that subsection.

(3) If the Administrator determines that the source of a release for which action is being taken pursuant to this subsection is an uncontrolled hazardous waste disposal site, that action shall be terminated immediately. A determination made under this paragraph shall not affect the liability of any person for the costs of any action taken, or affect in any way the payment of moneys obligated under paragraph (1) of this subsection prior to the date of the determination.

(b)(1) Whenever any hazardous substance as defined in section 601(o)(3) is released, or there is a substantial threat of such a release, from an uncontrolled hazardous waste disposal site, the Administrator is authorized to provide emergency assistance and containment of the hazardous substances or to arrange for the provision of such assistance and containment, unless he determines that the owner or operator of the site, or some other person, will properly provide such assistance and containment. *Provided, however*, That the Administrator shall not provide containment unless the State in which the site is located first enters into a contract providing adequate assurance that (A) it will provide for or otherwise assure any and all maintenance of containment and any and all containment costs which may prove necessary, beginning not later than one year from the date containment is first effectuated, as determined by the Administrator, and extending for 19 years or the expected life of the containment, whichever is less; and (B) that it will assure the availability of a hazardous waste disposal facility acceptable to the Administrator for any necessary offsite storage, destruction, treatment, or redisposal of the hazardous substances. *Provided further*, That the Administrator shall not provide containment projected by him to cost in excess of $2 0,000 for any site unless (A) he first determines that it is the least cost method of containing the hazardous substances over 20 years or the expected life of available containment methods, if less; and (B) the State, or other person, first enters into a contract providing adequate assurance that it will pay at least 10 per centum of the costs of first effectuating and maintaining for one year thereafter containment. *Provided further*, That the Administrator shall not provide containment at an uncontrolled hazardous waste disposal site owned by a State or a political subdivision of a State unless the State or subdivision first enters into a contract providing adequate assurance that it will pay at least 50 per centum of the costs of first effectuating containment and maintaining it for one year thereafter.

(2) Subject to the provisions of this title, the Administrator may pay for (A) 100 per centum of the costs of emergency assistance; and either (B) 100 per centum of the costs of first effectuating containment and maintaining it for one year thereafter, wherever the eligible costs of such containment do not exceed $200,000; (C) 90 per centum of the costs of first effectuating the containment and maintaining it for one year thereafter, wherever the eligible costs of such containment are in excess of $200,000; or (D) 50 per centum of the costs of first effectuating containment and maintaining it for one year thereafter wherever the uncontrolled hazardous waste disposal site is owned by a State or political subdivision thereof. Any payments for work incurred to effectuate containment shall at no time exceed the Federal share of the cost of such work incurred to the date of the voucher covering such payment plus the Federal share of the value of materials, chemicals, or other commodities which have been stockpiled in the vicinity of and for such containment activities.

(3) The State or political subdivision shall bear the cost of any remedial measures it may choose to take instead of the least cost containment, as determined by the Administrator, or in addition to any containment provided hereunder, such as complete waste and/or soil transport off site and treatment and redisposal at secured facilities off site. The Administrator is authorized, in lieu of providing containment or arranging for the provision of containment under paragraph (1) of this subsection, to reimburse the State or subdivision for such expenses, if approved by the Administrator, up to the amount which would have been necessary to effect the Federal share of any containment which could be provided thereunder.

(4)(A) Subject to the requirements of paragraph (1) of this subsection, the Administrator is authorized to provide for complete or partial waste transport, storage, destruction, or treatment and redisposal off site at secured facilities, or to arrange for the provision of such actions, if he determines that such actions are the least cost means of containment for an uncontrolled hazardous waste disposal site over a period of up to 20 years.

(B) Where the life cycle cost and environmental impact of providing for off-site transport of hazardous substances from two or more uncontrolled hazardous waste sites and of providing for centralized off-site storage, destruction, or treatment and redisposal at a secured facility off site does not exceed the total sum of the life cycle costs of the least cost containment at each of the sites, or the State or other person agrees by contract to pay the difference between the Federal share of the total sum of containment at each of the sites and the costs of centralized off-site transportation, storage, destruction, or treatment and redisposal, such centralized off-site actions shall be deemed to be the least cost means of containment, and the Administrator is authorized to provide for the transport of the wastes and their centralized off-site destruction, storage, or treatment and redisposal. *Provided*, the total cost of any action authorized by the Administrator under this clause shall not exceed the total sum of the Federal share of the costs of containment which could be authorized by him at each of the sites.

(5) Within 12 months after enactment of this title, if a State or political subdivision thereof can show to the satisfaction of the Administrator that it does not have legal authority to assume responsibility for maintenance of containment, or if it has such authority but has no legal authority to allocate funds for that purpose or to match the Federal share of containment, the Administrator may assume the responsibility for, and the costs of, first effectuating containment and/or maintenance of containment for up to an additional 12 months beyond the period provided for in paragraph (1) of this subsection if the State or political subdivision by contract agrees to assume the responsibility and subsequent costs at the end of such additional period, or to seek the legal authority to do so, as may be appropiate.

(6) If the Administrator provides containment pursuant to paragraph (1) of this subsection and the State or political subdivision thereof fails to comply with applicable requirements of any contract entered into pursuant to this subsection, the Administrator shall, after providing 60 days notice to the State, seek, in a court of competent jurisdiction to enforce the contract and/or to recover from the State the costs of maintaining such containment and the State or local share of the costs of containment at the site.

(7) Where a State or a political subdivision thereof is acting in behalf of the Administrator, the Administrator is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with emergency assistance or containment assisted under this title, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(c) Within 180 days after the effective date of this section, the Executive shall revise and republish the National Contingency Plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of this Act to reflect and effectuate the responsibilities and powers created by this title in addition to those matters specified in section 311(c)(2) of this Act on the date prior to the date of enactment of this title. In preparing such amendments, the Executive shall propose for public review and hold public hearings on a new section of the Plan to be known as the "National Uncontrolled Hazardous Waste Disposal Site Response Plan." Following such hearings, the Executive shall revise as necessary and finally adopt and publish the said Response Plan, which shall include at a minimum:

(1) methods for discovering and investigating such sites;

(2) methods for evaluating, including least cost analyses, and containing any releases of threats of releases from such sites which pose substantial danger to the public health or safety, or to significant environmental resources;

(3) methods and criteria for determining the appropriate extent of emergency assistance, containment, and other measures authorized by this title;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and non-governmental entities in effectuating the Plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies; and

(6) a method for and assignment of responsibility for reporting the existence of uncontrolled hazardous waste disposal sites which may be located on federally owned or controlled properties and any releases of hazardous substances from such sites.

Following publication of the revised National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The Executive may, from time to time as he deems advisable, revise, otherwise further amend, and republish the National Contingency Plan.

(d)(1) Consistent with the National Contingency Plan, the Executive may issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of released oil and hazardous substances; (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans; (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent release of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such releases; and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes in order to reduce the likelihood of releases of oil and hazardous substances.

(2) Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulations, shall be liable for a civil penalty of not more than $5,000 for each such violation. This paragraph shall not apply to any owner or operator of any vessel seaward of the territorial sea of the United States unless such owner or operator is otherwise subject to the jurisdiction of the United States. Each violation shall be a separate offense. The Executive may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount

of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance after notification of a violation, shall be considered by the Executive.

(e) Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a release, or an imminent release of large quantities of oil, or of a hazardous substance from a vessel, the United States may (1) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (2) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof) shall be compensable as a removal cost under section 607 of this title.

(f) In addition to any other action taken by a State or local government, when the Executive determines there may be a substantial danger to the public health or safety of the United States, because of an actual or threatened release of oil or a hazardous substance from an onshore facility, an offshore facility, or an uncontrolled hazardous waste disposal site, the Executive may require the Attorney General of the United States to secure such relief as may be necessary to abate such threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(g)(1) If any emergency assistance or containment activity is carried out by the Administrator pursuant to section 603(b)(1) of this title in relation to an uncontrolled hazardous waste disposal site located on property which is owned or operated by the person who owned or operated the property at the time it was utilized for the disposal of hazardous substances as defined in section 601(o)(3) of this title, and if the said person utilized the site at that time for the disposal of any such wastes produced by him, either at the site or elsewhere, and if said person failed to properly provide such emergency assistance or containment upon request of the Administrator, the Administrator may commence a civil action to impose a penalty against such person. The size of the penalty shall be based upon consideration of the size of the business of such person, the effect upon his ability to continue in business, the seriousness of any threat presented by the release or threatened release of hazardous substances as defined in section 601 (o)(3) of this title from the site, and any efforts made by such person to minimize or mitigate the effects of any release or threat of release. Any penalty imposed hereunder shall be in addition to any costs of such emergency assistance or containment recovered from such person by the fund pursuant to this title. *Provided, however,* That in no event shall any penalty imposed hereunder exceed two and one-half times the amount of the costs of emergency assistance and/or containment incurred by the Administrator.

(2) Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess and order the payment of such penalty and to grant any and all other appropriate relief. Any moneys received by the Administrator pursuant to this subsection shall be deposited in the fund.

(h) Anyone authorized by the Executive to enforce the provisions of this title may (1) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (2) upon presentation of his credentials, have a right of entry to, upon, over, or through any premises or property containing an offshore facility or an onshore facility or an uncontrolled hazardous waste disposal site, or any premises or property where the effects of a release of oil or hazardous substances are being, or may reasonably be expected to be experienced, (3) while on such property, take samples or photographs and make any analyses he deems necessary of any soil, water, residues, wastes, air, or other substances suspected to be or to contain oil or hazardous substances, (4) with or without a warrant arrest any person who violates the provisions of this title, or any regulations issued thereunder in his presence or view, and (5) execute any warrant or other process issued by an officer or court of competent jurisdiction.

## LIABILITY

SEC. 604(a). Subject to the provisions of subsections (c) and (d) of this section, the owner and operator of a vessel, other than a public vessel, or of an onshore facility or an offshore facility, which is the source of pollution, or which poses a threat of pollution in circumstances where removal costs are incurred, shall be jointly, severally, and strictly liable for all damages resulting from pollution or the threat thereof for which a claim may be asserted under section 607 of this title.

(b) Subject to the provisions of subsections (c) and (d) of this section, the owner and operator of an uncontrolled hazardous waste disposal site, if they caused or contributed or are causing or contributing to any release, or to the conditions which produce any such release, of a hazardous substance as defined in section 601(o)(3) of this title from such site, or the threat thereof where the costs described in subsection (d) of section 607 of this title are incurred, and any other person who caused or contributed or is causing or contributing to such incident, including but not limited to prior owners, lessees, and generators, transporters, or disposers of such hazardous substances, shall be jointly, severally, and strictly liable for all costs for which a claim may be asserted under that subsection.

(c)(1) Except when the pollution or threat thereof is caused in whole or in part by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator of a vessel or an onshore or offshore facility, or in whole or in part by a violation, within the privity or knowledge of the owner or operator, of applicable public health, safety, construction, or operating standards or regulations of the Federal Government; or except where the owner or operator is subject to criminal penalties for failure to furnish any notice of a release required by subsection (c) of section 602 of this title, or fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal, and

(2) Except when the release or threat of a release of a hazardous substance as defined in section 601(o)(3) of this title from an uncontrolled hazardous waste disposal site is caused in whole or in part by willful misconduct or gross negligence, within the privity or knowledge of any person liable under subsection (b) of this section, or in whole or in part by a violation within the privity or knowledge of any such liable person of any applicable public health, safety, construction, or operating standards or regulations of the Federal Government; or except where any such person fails to furnish the notice required by subsection (d) of section 602 of this title, or fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of emergency assistance or containment activities, the total of the liability under subsection (a) or subsection (b) of this section and any removal costs or costs of emergency assistance or containment recoverable by, or on behalf of, the owner or operator or other liable person shall be limited to—

(A) in the case of a vessel other than a ship or other than an inland oil barge, $150 per gross registered ton or $250,000, whichever is greater;

(B) in the case of an inland oil barge, $150,000 or $150 per gross registered ton, whichever is greater;

(C) in the case of a ship, $250,000 or $300 per gross registered ton (up to a maximum of $30,000,000), whichever is greater;

(D) in the case of an offshore facility operated under authority of the Outer Continental Shelf Lands Act, the total of removal costs plus $50,000,000; or

(E) in the case of an uncontrolled hazardous waste disposal site or an onshore facility or an offshore facility other than one described in paragraph (D), $50,000,000 unless a lesser limit is established by the Executive under subsection (e).

(d) There shall be no liability under subsection (a) or subsection (b) of this section where an owner, operator, guarantor, or other liable person can prove that—

(1) the pollution or release or threat thereof is caused solely by an act of God or an act of war;

(2) as to a particular claimant the economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(3) as to a particular claimant to the extent that the economic loss is caused by the negligence of that claimant. *Provided*, however, that nothing contained in this subsection shall be construed or interpreted to limit or deny any claim presented by or on behalf of any authorized agency of the United States Government arising out of such agency's response to pollution or to a release or threat thereof pursuant to this title.

(e) The Executive may issue regulations establishing limits of liability of no less than $8,000,000 and no more than $50,000,000 for various classes of onshore facilities and offshore facilities other than those described in subsection (c)(2)(D) of this section and for uncontrolled hazardous waste disposal sites. Any such regulations shall take into account the size, type, location, storage and handling capacity, and other matters relating to the likelihood of releases of oil or hazardous substances involving those classes.

(f) The Executive shall, from time to time, report to Congress on the desirability of adjusting the monetary limitations of liability specified in subsection (c) of this section.

(g)(1) Subject to the provisions of paragraph (2) of this subsection, the fund shall be liable, to the extent that the loss is not otherwise compensated, for all valid claims for losses or damages for which a claim may be asserted under section 607 of this title. Should moneys to pay any such claim not be available in the fund, the Executive shall defer payment of the claim until moneys are available.

(2) Except for the removal costs specified in section 601(ff)(1) of this title, there shall be no liability under paragraph (1) of this subsection—

(A) where the pollution or release from an uncontrolled hazardous waste disposal site is caused solely by an act of war;

(B) as to a particular claimant where the economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant. *Provided*, however, that nothing contained in this clause shall be construed or interpreted to limit or deny any claim presented by or on behalf of any authorized agency of the United States Government arising out of such agency's response to pollution or to a release or threat thereof pursuant to this title.

(h)(1) In addition to the damages and costs for which claims may be asserted under section 607 of this title, and without regard to the limitation of liability provided in subsection (c) of section 604 of this title, any person or persons liable under subsection (a) or subsection (b) of this section shall also be jointly and severally liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the liable person shall offer to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the liable person shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which advertising was commenced pursuant to section 608 of this title, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the liable person shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(2) The interest provided in paragraph (1) of this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(i) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a facility, or from any person who may be liable for a release or threat of release from an uncontrolled hazardous waste disposal site pursuant to subsection (b) of this section, to any other person the liability imposed under subsection (a) or (b) of this section, other than as specified in this title. *Provided*, That this provision does not preclude an agreement whereby the holder of a leasehold interest for the exploration of oil agrees to indemnify for, or hold harmless from, that liability the owner or operator of a facility which is, by contract or other agreement, engaged in activity on behalf of the holder of the leasehold interest.

(j) Nothing in this title, including the provisions of subsection (i) of this section, shall bar a cause of action that an owner or operator or any other person subject to liability under subsections (a) or (b) of this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(k) To the extent that they are in conflict with, or otherwise inconsistent with, any other provisions of Federal law relating to liability or the limitation thereof, the provisions of this section shall supersede all such other provisions of law, including those of subsection (a) of section 4283 of the Revised Statutes, as amended (46 U.S.C. 183(a)).

### FINANCIAL RESPONSIBILITY

SEC. 605(a)(1) The owner or operator of any vessel (except a non-self-propelled barge that does not carry oil or hazardous substances as fuel or cargo) over three hundred gross tons, which uses an offshore facility or the navigable waters shall establish and maintain in accordance with regulations promulgated by the Executive, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such vessel would be exposed in a case where there is an entitlement to limit liability in accordance with the provisions of subsection (c) of section 604 of this title, *Provided*, That the Executive may prescribe by regulation levels of financial responsibility requirements applicable to persons owning or operating more than one vessel; *Provided further*, That in no case may the total amount of financial responsibility so prescribed be less than the amount applicable to the largest of those vessels as determined under this paragraph. Financial responsibility may be established by any one, or any permitted combination, of the following methods acceptable to the Executive: evidence of insurance, guaranty, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a surety company authorized to do a surety business in at least one of the United States.

(2) The Secretary of the Treasury shall refuse the clearance required by section 4197 of the Revised Statutes of the United States to any vessel subject to this subsection which does not have certification furnished by the Executive that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations promulgated by him, shall (A) deny entry to any port or place in the United States, or to the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection which, upon request, does not produce certification furnished by the Executive that the financial responsibility provisions of paragraph (1) of this subsetion have been complied with.

(b) The owner or operator of an offshore facility which (1) is used for drilling for, producing, or processing oil, or (2) has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of oil at any one time, shall establish and maintain, in accordance with regulations promulgated by the Executive, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of the facility would be exposed, in a case where he would be entitled to limit his liability in accordance with the provisions of section 604(c) of this title, or $50,000,000, whichever is less; *Provided*, That the Executive may prescribe by regulation levels of financial responsibility requirements applicable to persons owning or operating more than one facility; *Provided further*, That in no case may the financial responsibility requirement prescribed be less than the highest amount applicable to any one of those facilities as determined under this subsection.

(c)(1) Any person who fails to comply with the requirements of subsection (a)(1) or subsection (b) of this section, the regulations promulgated thereunder, or any denial or detention order issued under subsection (a)(3) of this section, shall be subject to a civil penalty of not more than $10,000.

(2) Such penalty may be assessed by the Executive; no penalty shall be assessed until notice and an opportunity for hearing on the alleged violation have been given. In determining the amount of penalty or the amount agreed upon in compromise, the demonstrated good faith of the party shall be taken into consideration.

(3) At the request of the Executive, the Attorney-General may bring an action in the name of the fund to collect the penalty assessed.

(d) Any claim authorized by subsection (a) of section 607 of this title may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such claim in respect to its merits, the guarantor shall be entitled to invoke all rights and defenses which would be available to the owner or operator under this title, but the guarantor may not invoke policy or contractual defenses otherwise available to him in an action brought by the owner or operator. If the guarantor's obligation to make payment of such a claim arises solely out of the requirements of this subsection, the guarantor is entitled to reimbursement from the owner or operator. The guarantor need not provide protection for costs, loss, or damage intentionally caused.

(e) The Executive shall conduct a study to determine (1) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of vessels, onshore facilities, offshore facilities, and uncontrolled hazardous waste disposal sites subject to liability under section 604 of this title, and (2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, co-insurance provisions and exclusions. The Executive shall submit the results of his study, together with his recommendations, within two years of the date of enactment of this Act, and shall submit an interim report on his study within one year of the date of enactment of this Act.

### FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

SEC. 606. (a) There is hereby established in the Treasury of the United States an Oil and Hazardous Substances Liability Fund, which shall be administered by the Executive. The fund may sue and be sued in its own name.

(b) The total moneys received by the fund from the appropriations and fees authorized by subsections (e) and (f) of this section shall not exceed $250,000,000 in fiscal year 1981, $375,000,000 in fiscal year 1982, $500,000,000 in fiscal year 1983, and $500,000,000 in fiscal year 1984.

(c) The fund shall be constituted from—

(1) such sums as may be appropriated to it, as provided for in subsection (e) of this section; and

(2) all fees collected pursuant to subsection (f) of this section;

(3) all moneys recovered on behalf of the fund under section 610 of this title;

(4) all moneys transferred from funds abolished pursuant to section 6 of this Act; and

(5) all other moneys recovered or collected on behalf of the fund under this title, including penalties assessed under this title, moneys recovered pursuant to section 602(e)(3) of this title, and interest received from the investment of moneys held in the fund pursuant to subsection (g) of this section.

(d)(1) The fund shall be available only to the extent and in such amounts as provided in appropriation acts for:

(A) removal costs described in clause (1) of subsection (s) of section 601 of this title;

(B) costs of emergency assistance described in subsection (ff) of section 601 of this title;

(C) costs of containment described in subsection (gg) of section 601 of this title;

(D) costs incurred pursuant to section 603(a)(1)(B) of this title;

(E) the processing, settlement, and payment of claims under section 609 of this title; and

(F) administrative and personnel costs of the Federal Government incident to the administration of this title, including but not limited to claims settlement activities and adjudicatory and judicial proceedings, and reports and studies required by this title, whether or not such costs are recoverable under section 610 of this title.

(e) There is hereby authorized to be appropriated to the fund from the general fund of the United States Treasury, not to exceed $50,-000,000 in fiscal year 1981, $75,000,000 in fiscal year 1982, and $100,-000,000 per year in fiscal years 1983 and 1984. Any and all sums appropriated to or deposited in said fund shall remain available until expended.

(f)(1) There is imposed upon the owners of refineries receiving crude or unfinished petroleum oil and upon the owners of any petroleum oil for export at the point of export or loading for export or of any petroleum oil for entry into the United States at the point of entry or unloading for entry, whether for import or transfer to a foreign country, a fee, not to exceed 3 cents per barrel of petroleum oil received, exported, or entered. *Provided, however*, That the total of fees imposed under this paragraph shall not exceed $60,000,000 in fiscal year 1981, $80,000,000 in fiscal year 1982, and $100,000,000 per year in fiscal years 1983 and 1984.

(2) There is imposed upon each supplier of petrochemical feedstocks a fee, not to exceed 0.5 cents per pound, on any amount of petrochemical feedstock supplied to another person or used by said supplier. *Provided, however*, that the total of fees imposed under this paragraph shall not exceed $90,000,000 in fiscal year 1981, $150,000,000 in fiscal year 1982, and $200,000,000 per year in fiscal years 1983 and 1984.

(3) There is imposed upon each supplier of inorganic elements and compounds a fee, not to exceed 2 dollars per ton, on any amount of inorganic element or compound supplied to another person or used by said supplier. The inorganic elements and compounds subject to this fee are—

(A) arsenic and the equivalent weight of arsenic in arsenic trioxide, cadmium, chromium and the equivalent weight of chromium in chromite, chromic acid, sodium dichromate, and potassium dichromate, lead and the equivalent weight of lead in lead oxide, and mercury;

(B) chlorine, hydrochloric acid, hydrofluoric acid, and bromine in methyl bromide and ethylene dibromide;

(C) phosphoric acid, sulfuric acid, nitric acid, potassium hydroxide, and sodium hydroxide;

(D) ammonia and the equivalent weight of ammonia in ammonium nitrate; and

(E) such other inorganic elements and compounds as the Administrator may deem appropriate, based upon information available to him as a result of listing or characterizing hazardous substances or of implementing this Act. *Provided, however*, that the total of fees imposed under this paragraph shall not exceed $50,-000,000 in fiscal year 1981, $70,000,000 in fiscal year 1982, and $100,000,000 per year in fiscal years 1983 and 1984.

(4)(A) Any fees imposed by paragraphs (1), (2), and (3) shall be assessed and collected by the Secretary of the Treasury or his delegate, and the provisions of subtitle F of the Internal Revenue Code of 1954 shall apply to the assessment and collection of such fee as if such fee were a tax described in Chapter 32 of such Code.

(B) Any fees prescribed by this subsection shall be imposed only once on any quantity of petroleum oil, feedstock, element, or compound, except that any fee imposed on any quantity of refined petroleum used as feedstock shall be added, once and only once, to the fee imposed on that quantity pursuant to paragraph (1) of this subsection. The Administrator may recommend to the Secretary of the Treasury an economic incentive for recycling feedstocks and elements or compounds covered by this subsection by reducing the fee on such feedstocks and elements or compounds removed from the waste stream of a production process and recycled in such production process or reintroduced into products or used as a source of energy. The Secretary of the Treasury shall, based upon the recommendation of the Administrator, establish the amount of any such reduction of fee by regulation. *Provided, however*, that in no event shall any reduction of fee exceed the fee on such feedstock and element or compound.

(5) In no event shall the fee imposed with respect to a quantity of petrochemical feedstock or inorganic element or compound pursuant to paragraphs (2) or (3) of this subsection exceed two per centum of the price of the petrochemical feedstock or inorganic element or compound when sold at arms length by the supplier.

(6) From time to time, beginning two years after the establishment of the fund, the Administrator shall recommend to the Secretary of the Treasury any modification of the fees authorized by this subsection needed to assure, to the extent reasonably possible, that the percentage of the total fees collected from each of the various authorized sources is equitable, based upon the claims and payments experience of the fund. Any such recommendation shall be based upon the annual reports provided for in subsection (a) of section 614 of this title. The Secretary of the Treasury shall, based upon the recommendation of the Administrator, establish the new fee schedule by regulation. No regulation that modifies fees promulgated by the Secretary of the Treasury, nor any modification of such a regulation, whether or not in effect, may be stayed by any court pending completion of judicial proceedings for the review of that regulation or modification.

(g)(1) The Secretary of the Treasury or his delegate shall, after consultation with the Secretary of Transportation and the Administrator, invest such portion of the fund, up to $50,000,000, as is not, in his judgment, required to meet current withdrawals. The primary purpose of this capital reserve is to assure the availability of money to cover the costs of Federal response actions.

(2) Any funds invested by the Secretary of the Treasury under paragraph (1) shall be in public debt securities with maturities suitable for the needs of the fund, as determined by said Secretary after consultation with the Secretary of Transportation and the Administrator, and bearing interest at rates determined by the Secretary of the Treasury taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on these investments shall be credited to and form a part of the fund.

(h) To the extent practicable, the Secretary of the Treasury shall keep precise records as to the sources of all moneys in the fund and as to all claims and payments made. For purposes of the annual report provided for in subsection (A) of section 614 of this title, claims and payments shall be categorized as claims and payments (1) for the release or threatened release of oil from uncontrolled hazardous waste disposal sites; (2) for the release or threatened release of hazardous substances from uncontrolled hazardous waste disposal sites; (3) for all other releases or threatened releases of oil; and (4) for all other releases or threatened releases of hazardous substances.

### DAMAGE AND CLAIMANTS

SEC. 607. (a) Claims asserted and compensable but unsatisfied under provisions of the Trans-Alaska Pipeline Authorization Act, section 311 of this Act, the Deepwater Port Act of 1974, and title III of the Outer Continental Shelf Lands Act Amendments of 1978, which provisions are repealed or modified by section 6 of this Act may be asserted under this title; and other claims for damages for economic loss incurred on or after the effective date of this section, resulting from pollution, or for costs specified in section 601(ff)(1) of this title incurred by reason of a release or threat thereof, may be asserted under this title for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) injury to, or destruction of, natural resources, including costs for damage assessment; and

(4) loss of opportunity to harvest marine life due to injury to or destruction of natural resources.

(b) A claim authorized by subsection (a) of this section may be asserted—

(1) Under item 1,

(A) by any agency of the United States government,

(B) by any State, with respect to reimbursements allowed under the system established in the National Contingency Plan.

(C) by any United States claimant—

(i) who is an owner or operator of a vessel or an onshore facility or an offshore facility;

(ii) which is engaged in the storage, handling, or transportation of oil or hazardous substances; and

(iii) who, in the course of normal operations, maintains expertise, supplies, or equipment to be used for the removal of oil or hazardous substances; and

(iv) who, respecting a release not emanating from a vessel or an onshore facility or an offshore facility owned or operated by such claimant, incurs removal costs referred to in section 601(ff)(2) of this title, as certified by the responsible Federal official; or

(D) by any United States claimant who is an owner or operator of a vessel or onshore facility or offshore facility, for cleanup costs associated with a release occurring from that vessel or facility: *Provided:* That the owner or operator of a vessel or onshore facility or offshore facility who would otherwise be liable under subsection (a) of section 604 of this title may assert such a claim only if he can show that he is entitled to a defense to liability under section 604(d)(1) of this title or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under subsection (c) of section 604 of this title: *Provided further*, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, such claim may be asserted only as to removal costs incurred in excess of that limitation:

(2) under item 2 by any United States claimant, if the property involved is owned or leased by the claimant;

(3) under item (3), by the President, as trustee, for natural resources over which the United States Government has sovereign rights or natural resources within the territory or fishing conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State: *Provided* That compensation paid under this item shall be used only for assessing the damages to and the restoration of the natural resources damaged or for acquisition of equivalent resources;

(4) under item 4 by any United States claimant;

(5) under items 1 through 4, by a foreign claimant to the same extent that a United States claimant may assert a claim if—

(A) the pollution occurred (i) in the internal waters or (ii) in or on the territorial sea or the immediately adjacent shoreline of a foreign country of which the claimant is a resident;

(B) the claimant is not otherwise compensated for his loss;

(C) the discharge was from a facility located adjacent to or within the navigable waters or from a vessel within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended by the Act (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended by the Act (33 U.S.C. 1501 et seq.); and

(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants: *Provided*, that subclauses (A), (C), and (D) of this clause shall not apply where the claim is asserted by a resident of Canada and where pollution involves oil discharged from a vessel carrying oil that has been (i) transported through the pipeline authorized by the Trans-Alaska Pipeline Authorization Act, as amended, (ii) loaded for transportation to a port under the jurisdiction of the United States, and (iii) discharged prior to being brought ashore in that port; and *Provided further*, That notwithstanding paragraph (1) of subsection (b) of section 6 of this Act, with respect to any oil pollution described in the foregoing proviso.

any resident of Canada may assert a claim for all damages, including clean-up costs which would have been cognizable under subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act;

(6) Under item 1, by a foreign owner or operator of a vessel to the same extent that a United States owner or operator of a vessel may assert such a claim under clause (1) of this subsection where the pollution involved is that set forth in clauses (1), (2), or (4) of subsection (bb) of section 601 of this title; and

(7) Under any item, by the Attorney General, on his own motion or at the request of the President, on behalf of any group of United States claimants who may assert a claim under this subsection, when he determines that the claimants would be more adequately represented as a class in asserting their claims. Failure of the Attorney General to take action shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

(c) If the number of members of a class in an action brought under clause (7) of subsection (b) of this section exceeds one thousand, publication of notice of such action in local newspapers of general circulation in the areas in which the damaged persons reside shall be deemed to fulfill the requirement for public notice established by Rule 23(c) (2) of the Federal Rules of Civil Procedure.

(d)(1) The Administrator shall, within 12 months of the effective date of this title, establish by regulation a priority system for responding to releases or threats of releases from uncontrolled hazardous waste disposal sites which shall include, but not be limited to:

(A) methods, including the role of the States in determining State priorities for response, and in assisting in the Administrator's determination of national priorities for response, and criteria for determining response priorities in the development of which the Administrator shall, to the extent possible, take into account: the significance of the threat to public health, safety, and significant environmental resources; the population at risk, the hazard potential of the hazardous substances at such sites; the potential for contamination of drinking water supplies; the potential for direct human contact; the potential for destruction of sensitive ecosystems; State preparedness to assume State costs and responsibilities; and such other factors as he deems appropriate; and

(B) a system, including the use of contracts, whereby the State or States affected by a release of hazardous substances from such sites may act where necessary to provide emergency assistance and containment and may be reimbursed for the reasonable costs incurred for such assistance and containment from the fund.

(2) Claims for the costs of emergency assistance and containment carried out pursuant to subsection (b) of section 603 of this title may be asserted if the Administrator certifies that such costs have been incurred in a manner consistent with the regulations promulgated pursuant to paragraph (1) of this subsection—

(A) by any agency of the United States government;

(B) by any State, with respect to any reimbursements allowed by the said regulations; or

(C) by any person who is an owner or operator of an uncontrolled hazardous waste disposal site, or any other person who may be liable for a release from such site, for any such costs associated with a release occurring from that site: *Provided*, That the owner or operator of any uncontrolled hazardous waste disposal site, or any other person who would otherwise be liable under subsection (b) of section 604 of this title, may assert such a claim only if he can show that he is entitled to a defense to liability under subsection (d) of section 604 of this title, or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under subsection (c) of section 604 of this title: *Provided further*, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, such claim may be asserted only as to emergency assistance and containment costs incurred in excess of that limitation. *Further provided*, That nothing contained in this subsection shall be deemed or held to prevent the assertion of a claim by the Administrator for any emergency assistance or containment activity carried out or authorized by him prior to the promulgation of the regulations provided for herein.

### DESIGNATION AND ADVERTISEMENT

SEC. 608. (a)(1) When the Executive receives information of an incident which involves pollution or when he exercises his authority to respond to a release of a hazardous substance from an uncontrolled hazardous waste disposal site, he shall, where possible, designate the source or sources of the pollution or release and shall immediately notify the owner, operator, and the guarantor of the source of that designation and, in the case of an uncontrolled hazardous waste disposal site, any other liable party, where possible.

(2) Any person designated under paragraph (1) of this subsection may deny that designation. If the owner, operator, or guarantor of a source of pollution fails to inform the Executive, within five days after receiving notification of the designation, of his denial, that owner, operator, or guarantor, as required by regulations promulgated by the Executive, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Executive shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

(b) In a case where—

(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (a) of this section,

(2) the source of the pollution or release was a public vessel, or

(3) the Executive is unable to designate the source or sources of the pollution or release under paragraph (1) of subsection (a) of this section, he shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the fund.

(c) Advertisement under subsection (a) of this section shall commence no later than fifteen days from the date of the designation made thereunder and continue for a period of no less than thirty days.

### CLAIMS SETTLEMENT

Sec. 609. (a) Claims may be presented directly to the fund by any authorized agency of the United States Government for the costs described in clauses (A) through (D) of section 606(d)(1) of this title, and the Executive is authorized to promulgate regulations designating the Federal official or officials who may obligate available money in the fund for such purposes. Except as provided in subsection (b) of this section, all other claims shall be presented to the owner, operator, or guarantor.

(b) All claims shall be presented to the fund—

(1) where the Executive has advertised or otherwise notified claimants in accordance with subsection (b) of section 608 of this title, or

(2) by an owner, operator or other liable person where he may recover under the provisions of subsection (b)(1) or under subsection (d)(2) of section 607 of this title.

(c) In the case of a claim presented in accordance with subsection (a), and in which—

(1) the person to whom the claim is presented denies all liability for the claim, for any reason, or

(2) the claim is not settled by any person by payment to the claimant within 120 days of the date upon which (A) the claim was presented, or (B) advertising was commenced pursuant to paragraph (2) of subsection (a) of section 608 of this title, whichever is later, the claimant may elect to commence an action in any court of competent jurisdiction against the owner, operator, or guarantor, or to present the claim to the fund, that election to be irrevocable and exclusive. Should the Claimant elect to commence an action in court, the standards of liability, and the defenses and limitations thereto set forth in section 604 of this title shall apply, any other laws to the contrary notwithstanding.

(d) In the case of a claim presented in accordance with subsection (a) of this section, where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under subsection (c) of section 604 of this title or because the owner, operator, and guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the fund.

(e) In the case of a claim which has been presented to any person, pursuant to subsection (a) of this section, and which is presented to the fund pursuant to subsection (c) or (d) of this section, such person, at the request of the claimant, shall transmit the claim and supporting documents to the fund. The Executive may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

(f) In the case of a claim presented to the fund, pursuant to subsection (b), (c), or (d) of this section, and in which the fund—

(1) denies all liability for the claim, for any reason, or

(2) does not settle the claim by payment to the claimant within sixty days of the date upon which (A) the claim was presented to the fund or (B) advertising was commenced pursuant to subsection (c) of section 608 of this title, whichever is later, the claimant may submit the dispute to the Executive for decision in accordance with section 554 and related provisions of title 5, United States Code.

(g)(1) The Executive shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund: *Provided*, That nothing contained in this section or the preceding section shall be construed as authorizing the Executive to deny any claim presented by any authorized agency of the United States Government for cleanup, removal, emergency assistance, or containment costs or costs incurred under section 603 (a)(1)(B) of this title. Should moneys for any such claim not be available in the fund, the Executive shall defer payment of the claim until moneys are available.

(2) Except as provided in paragraph (3) of this subsection, the Executive shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the Executive that advertising is not reasonably practicable. The Executive shall establish procedures for the approval and payment of claims. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Executive.

(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Executive may use Federal personnel to process claims against the fund.

(h) Without regard to subsection (b) of section 556 of title 5, United States Code, the Executive is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Executive pursuant to subsection (f). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary travel and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special government employees, apply to panel members appointed from private life.

(i) (1) Upon receipt of a request for decision from a claimant, properly made, the Executive shall refer the dispute to an administrative law judge, appointed under section 3105 of title 5, United States Code or a panel appointed under subsection (h) of this section.

(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding subject to this subsection, the presiding officer may require by subpoena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpoenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Executive. If a person fails or refuses to obey a subpoena, the Executive may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(4) A hearing conducted under this subsection shall be conducted within the United States judicial district within which, or nearest to which, the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or, if the damage occurred outside any district, of the nearest district.

(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Executive except that the Executive in his discretion and in accordance with rules which he may promulgate, may review the decision upon his own initiative or upon exception of the claimant or the fund.

(6) Final orders of the Executive made under this subsection shall not be subject to judicial review.

(j) (1) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

(2) The fund may intervene in the action as a matter of right.

(3) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this title, the fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

(4) If the fund receives from either the plantiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

(5) If neither the plaintiff nor the defendant owner or operator gives notice of such an action to the fund, the limitation of liability otherwise permitted by subsection (c) of section 604 of this title is not

available to that defendant, and the plaintiff shall not recover from the fund any sums not paid by the defendant.

(k) In any action brought against the fund, the plaintiff may join the owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund under any provisions of this title.

(l) No claim may be presented, nor may an action be commenced for damages recoverable under this title, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund, as to their respective liabilities within three years from the date of discovery of the economic loss or cost for which a claim may be asserted under subsection (a) of section 607 of this title.

### SUBROGATION

Sec. 610. (a) Any person or governmental entity, including the fund, who shall pay compensation to any claimant for an economic loss or cost, compensable under section 607 of this title, shall be subrogated to all rights, claims, and causes of action which that claimant has under this title.

(b) Upon request of the Executive, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant pursuant to this title. Such an action may be commenced under any law against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable thereunder to the compensated claimant or to the fund, for the damages for which the compensation was paid.

(c) In all claims or actions by the fund against any person pursuant to the provisions of subsections (a) and (b) of this section, the fund shall recover—

(1) for a claim presented to the fund (where there has been a denial of source designation) pursuant to section 608(b)(1) of this title, or (where there has been a denial of liability) pursuant to section 609(c)(1) of this title—

(A) subject only to the limitation of liability to which the defendant is entitled under subsection (c) of section 604 of this title, the amount the fund has paid to the claimant, without reduction;

(B) interest on that amount, at the rate calculated in accordance with section 604(h)(2) of this title, from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund was paid by the defendant, inclusive, less the period, if any, from the date upon which the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive, and

(C) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorney's fees; and

(2) for a claim presented to the fund pursuant to section 609 (c)(2) of this title—

(A) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant;

(ii) interest, at the rate calculated in accordance with section 604(h)(2) of this title, for the period specified in clause (1) of the subsection; and promulgate, may review the decision upon his own initiative or upon exception of the claimant or the fund.

(iii) all costs incurred by the fund by reason of the claim of the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorney's fees; or

(B) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) the amount the fund has paid to the claimant, without reduction;

(ii) interest, at the rate calculated in accordance with section 604(h)(2) of this title, from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subclause: *Provided*, That if the defendant tendered the offer of the largest amount referred to in this subclause within 120 days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced pursuant to section 608 of this title, the defendant shall not be liable for interest for that period; and

(iii) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

(d) The fund shall pay over to the claimant that portion of any interest the fund shall recover, pursuant to subsections (c)(1) and (c)(2)(A) of this section, for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

(e) The fund is entitled to recover for all interest and costs specified in subsection (c) of this section without regard to any limitation of liability to which the defendant may otherwise be entitled.

## JURISDICTION AND VENUE

SEC. 611. (a)(1) Except as provided in paragraph (2) of this subsection, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

(2) Review of any regulation issued under this title may be had upon application of an interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application for review must be made within ninety days from the effective date of the regulation.

(b) For the purposes of paragraph (1) of subsection (a) of this section, venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the fund shall reside in the District of Columbia.

(c) The provisions of subsection (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any fee, as provided by section 606(f) of this title, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

## RELATIONSHIP TO OTHER LAW

SEC. 612. (a) Except as provided in this title—

(1) No action may be brought in any court of the United States, or of any State or political subdivision thereof, for damages for an economic loss or cost described in subsection (a) of section 607 of this title, a claim for which may be asserted under this title, and

(2) no person may be required to contribute to any fund, the purpose of which is to pay compensation for such a loss or cost, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss or cost.

(b) Nothing in subsection (a) of this section shall preclude or be interpreted to preempt any State from establishing liability funds, establishing limits of liability, setting financial responsibility requirements, or imposing any taxes or fees upon any person, or upon oil or hazardous substances for the purpose of establishing liability and compensation schemes for losses or costs not compensated under this title which are associated with pollution, or for any losses or costs associated with releases of hazardous substances as defined in section 601 (o)(3) at uncontrolled hazardous waste disposal sites.

(c) Nothing in subsection (a) of this section shall prohibit an action by the fund, under any other provision of law, to recover compensation paid pursuant to this title.

(d) Regardless of any State statutory or common law to the contrary, no person who asserts a claim for damages pursuant to this title shall be deemed or held to have waived any other claim for damages not covered or assertable under this title arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim pursuant to this title shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable under this title arising from the same incident, transaction, or set of circumstances.

(e) In the case of conflict or inconsistency, the provisions of this Act shall supersede all other provisions of Federal law which may define liability for the release of oil or hazardous substances, provide a mechanism for responding to such releases, set up a claim mechanism relating to losses resulting from such releases, or otherwise regulate or control the release or threat of release of oil or hazardous substances. *Provided*, That this title does not preempt the authority of the Federal Government to take action under other provisions of Federal law for any remedies not provided by this title.

### AUTHORITY TO DELEGATE, ISSUE REGULATIONS

SEC. 613. The President is authorized to delegate and assign any duties or powers imposed upon him or assigned to the Executive, and, except to the extent limited by section 606(f) of this title, to promulgate any regulations necessary to carry out the provisions of this title.

### REPORTS, STUDIES, REVIEW OF FEES AND PENALTIES

SEC. 614. (a) The Executive shall submit to the Congress within six months after the end of each fiscal year, beginning one year after the establishment of the fund pursuant to section 606 of this title, a report summarizing the receipts and disbursements made from the fund during that year, showing categories of sources and types of damages reimbursed. The report shall also describe the administration and functioning of the fund during the period covered and present any recommendations the Executive may have for improvement.

(b) No more than three years after the effective date of this title, the Executive shall make a comprehensive report to the Congress on experience with the implementation of this title, including, but not limited to, an analysis of: (1) whether the prohibitions against releases are effective; (2) the extent to which the fund is effective in enabling government to respond to and mitigate the effects of releases and threatened releases of oil and hazardous substances; (3) the cost of responding to and the potential threat to public health or safety, or to significant environmental resources, posed by remaining uncontrolled hazardous waste disposal sites; (4) whether the fees, appropriations, and penalties established hereunder are sufficient and equitable; and (5) State participation in the system of response, liability, and compensation established by this title. In preparing such report, the Executive shall consult with appropriate Federal, State, and local agencies, affected industries and claimants and other interested parties. Based upon the analyses and consultation required by this subsection, the Executive shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this title, including but not limited to recommendations concerning authorization levels, fees, States participation, liability and liability limits, and financial responsibility provisions.

## EFFECTIVE DATES, SAVINGS PROVISION

SEC. 5. (a) This section, section 7 and all provisions of this Act authorizing the appropriation of funds, the delegation of authority, and the promulgation of regulations shall be effective on the date of enactment of this Act.

(b) All other provisions of this Act and the regulations applicable thereto shall be effective on the first day of the first calendar month beginning on or after the one hundred and eightieth day after the date of enactment of this Act; *Provided*, That any regulations issued pursuant to this title may provide for such an additional period in which to comply or for such an effective date as the Executive may determine is reasonable.

(c) Any regulation issued pursuant to any provision of section 311 of the Federal Water Pollution Control Act, as amended, which is in effect on the date immediately preceding the effective date of section 6 of this Act shall be deemed to be a regulation issued pursuant to the authority of Title VI of section 4 of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(d) Any regulation—

(1) respecting financial responsibility,

(2) issued pursuant to any provision of law repealed by section 6 of this Act, and

(3) in effect on the date immediately preceding the effective date of section 6 of this Act shall be deemed to be a regulation issued pursuant to the authority of Title VI of section 4 of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(e) No provision of this Act shall be deemed or held to moot any litigation concerning releases of oil or hazardous substances commenced prior to the effective date of this Act.

## CONFORMING AMENDMENTS

SEC. 6. (a) Subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (87 Stat. 586) is amended, in the first sentence, by inserting after "any area", the words "in the State of Alaska"; by inserting after "any activities", the words "related to the trans-Alaska oil pipeline", and by inserting at the end of the subsection a new sentence to read as follows: "this subsection shall not apply to removal costs resulting from pollution as that term is defined in subsection (ff) of section 601 of the Oil, Hazardous Substances, and Hazardous Wastes Response, Liability, and Compensation Act of 1979.".

(b) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act is hereby repealed. The Trans-Alaska Pipeline Liability Fund is hereby abolished. All assets of that fund, as of the effective date of this section, shall be transferred to the fund established by section 606 of Title VI, as set out in section 4 of this Act. The fund shall assume any and all liability incurred by the Trans-Alaska Pipeline Liability Fund under the terms of subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act.

(c) Section 17 of the Intervention of the High Seas Act (88 Stat. 10) is amended to read as follows:

> SEC. 17. The fund established under section 606 of the Oil, Hazardous Substances, and Hazardous Wastes Response, Liability, and Compensation Act of 1979 shall be available to the Secretary for actions and activities taken under section 5 of this Act.

(d) Section 311 of the Federal Water Pollution Control Act, as amended, is hereby repealed. The fund established pursuant to subsection (k) of that section is hereby abolished, and any and all assets of that fund, as of the effective date of this section, shall be transferred to the fund established by section 606 of Title VI, as set out in section 4 of this Act.

(e) The Deepwater Port Act of 1974 (88 Stat. 2126) is amended as follows:

(1) In section 4(c)(1), strike "section 18(l) of this Act," and insert in lieu thereof "section 605 of the Oil, Hazardous Substances, Hazardous Wastes Response, Liability, and Compensation Act of 1979.".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are deleted.

(3) Clause (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu thereof "fund established under section 606 of the Oil, Hazardous Substances, and Hazardous Wastes Response, Liability, and Compensation Act of 1979.".

(4) Subsection (k) of section 18 is amended to read as follows:

> "(k) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Oil, Hazardous Substances, and Hazardous Wastes Response, Liability, and Compensation Act of 1979, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d), respectively.

(f) Title III of the Outer Continental Shelf Lands Act Amendments of 1978 is repealed. Any fees or moneys deposited in the Offshore Oil Pollution Compensation Fund established under Section 302 of that title shall be deposited in the fund established by section 606 of Title VI, as set out in section 4 of this Act. The fund shall assume any and all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

(g) Subsection (b) of section 504 of the Federal Water Pollution Control Act, as amended, is hereby repealed.

### SEPARABILITY

SEC. 7. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act shall not be affected thereby.

# APPENDIX II

## AMENDMENTS

This appendix contains those amendments offered to the three principal bills (S. 1480, H.R. 7020, and H.R. 85) which do not appear in the debates.

In the Senate, amendments are printed as separate documents and assigned numbers. Their authors frequently request that they be printed in the CONGRESSIONAL RECORD, as well, often in conjunction with explanatory remarks or statements. An amendment which first appears during debate on the floor of the Senate is referred to as an unprinted amendment, and in the CONGRESSIONAL RECORD bears the heading: "UP AMENDMENT NO. —."

Amendments submitted in the House of Representatives are printed only in the CONGRESSIONAL RECORD, again, frequently accompanied by a statement. In this volume, if the amendment was subsequently offered in identical form during debate it is printed at that point, rather than in this appendix. See the "Guide to Texts of Bills and Amendments" (vol. 1, p. v) for a complete listing and the location of the documents.

## AMENDMENTS TO S. 1480

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**AMENDMENT NO. 431**

Purpose: ..........................................................................................

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**IN THE SENATE OF THE UNITED STATES—96th Cong., 1st Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 14 (legislative day, June 21), 1979

Referred to the Committee on Environment and Public Works and ordered to be printed

AMENDMENT intended to be proposed by Mr. STAFFORD (for himself and Mr. CHAFEE)

Viz: On page 38, after line 2, insert the following:

(e) Section 305 of title III of the Outer Continental Shelf Act Amendments of 1978 is amended by adding a new subsection as follows:

"(e) Any guarantor against which claims are asserted under subsection (c) of this section or section 308 of this title shall not be liable for those claims in an amount exceeding that for which the guarantor has provided the evidence of financial responsibility required under this section: *Provided*, That this subsection shall not alter the liability of an owner or operator under this title.".

[From the Congressional Record, Dec. 10, 1979, pp. S18162-S18163]

## ENVIRONMENTAL EMERGENCY RESPONSE ACT—S. 1480

### AMENDMENTS NOS. 771 AND 772

(Ordered to be printed and referred to the Committee on Environment and Public Works.)

Mr. STAFFORD (for himself, Mr. Culver, Mr. Randolph, and Mr. Baker) submitted two amendments intended to be proposed by them, jointly, to S. 1480, a bill to provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Mr. STAFFORD. Mr. President, I am pleased to submit with Senators Culver, Randolph, and Baker certain amendments to S. 1480, The Environmental Emergency Response Act. The Subcommittees on Environmental Pollution and Resource Protection are in the midst of markups on S. 1480 and these amendments represent substantial progress in perfection of the bill.

The amendments were developed in cooperation with representatives of the Fertilizer Institute to assure that S. 1480's provisions do not inadvertently disrupt or damage the fertilizer industry. The purpose of S. 1480 is to require those who damage human health or the environment through the release of poisons to pay for the costs caused by these releases. The bill is not designed to extract costs from innocent third parties or for the release of benign substances. The amendments clarify this objective with respect to the fertilizer industry.

Quite aside from their substantive significance, the amendments are important for another reason. They illustrate the kind of progress which can be made in the development of legislation when responsible industries have legitimate complaints and are reasonable in their demands. Although the fertilizer industry recognized the vital importance of legislation such as S. 1480, its members had legitimate criticisms of the bill's provisions. Rather than stridently opposing the legislation—and thus creating ill will and suspicion on all sides—the industry was open and above board. Representatives described and justified their problems and conceded that with these corrected S. 1480 was a good bill.

Given that kind of attitude of cooperation, I am pleased to introduce the amendments and, when the proper time arrives, will seek their adoption.

I ask unanimous consent that the text of the amendment and an exchange of letters accompanying them to be printed in the RECORD at this point.

There being no objection, the amendments and letters were ordered to be printed in the RECORD, as follows **[Secs. 211 and 101(20)(B)]:**

## AMENDMENT NO. 771

Purpose: ..............................................................................

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IN THE SENATE OF THE UNITED STATES—96th Cong., 1st Sess.

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

December 10 (legislative day, November 29), 1979

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. STAFFORD (for himself, Mr. CULVER, Mr. RANDOLPH, and Mr. BAKER)

Viz:

On page , line , insert the following: "Modify applicable fee provisions as follows:

"(3)(A) Within twelve months after enactment of this Act, and annually thereafter, the Secretary of the Treasury shall revise the fee structure, if necessary, to assure that—

"(1) feedstocks supplied to industries which do not cause or contribute significantly to releases requiring compensation from the Fund are exempted from payment of a fee; and

"* . * * * * * *

"(B) For purposes of the initial rules or regulations relating to the amount and collection of fees—

"(1) the fertilizer production industry shall be conclusively presumed exempt pursuant to clause (c)(3)(A)(1) above.".

III

AMENDMENT NO. 772

Purpose: ....................................................................................

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IN THE SENATE OF THE UNITED STATES—96th Cong., 1st Sess.

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

December 10 (legislative day, November 29), 1979

Referred to the Committee on Environment and Public Works and ordered to be printed

AMENDMENT intended to be proposed by Mr. STAFFORD (for himself, Mr. CULVER, Mr. RANDOLPH, and Mr. BAKER)

Viz:

On page 7, after line 12, insert the following new paragraph and renumber succeeding paragraphs accordingly:

"(16) in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier (A) the term 'owner or operator' shall mean such common carrier or other bona fide for-hire carrier acting as an independent contractor during such transportation, (B) the generator of such hazardous substance shall not be considered to have caused or contributed to any discharge or release during such transportation which resulted solely from circumstances or conditions beyond his control.".

[From the Congressional Record, Dec. 10, 1979—Continued]

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
*Washington, D.C., November 14, 1979.*

Mr. EDWARD WHEELER,
*The Fertilizer Institute,*
*Washington, D.C.*

DEAR MR. WHEELER: This is to confirm recent discussions regarding certain proposed amendments to S. 1480.

As we have indicated, a fundamental purpose of S. 1480 is to encourage a higher standard of care in the manufacture and handling of hazardous substances by imposing legal responsibility for the damages which they cause. Your testimony and subsequent communications have clearly conveyed your belief that current language of S. 1480 would go beyond this desired result. Specifically, you believe the language would create liability in situations where a shipper cannot exercise control; and, you believe that the fee-fund provisions would impose a great financial burden on fertilizers, which you believe are essentially benign substances. In addition, you are greatly concerned by the so-called "release concept"; and fear that it could ban the normal application of fertilizers.

We believe a series of amendments which would correct these perceived deficiencies in S. 1480 could be acceptable to many of the parties concerned with this legislation. Your staff has indicated that if these amendments were adopted the Fertilizer Institute would find S. 1480 acceptable and, indeed, support it. Since we are now planning to introduce these amendments in the near future, we would like to confirm the Institute's position so that we can affirm in floor remarks that we have reached an accommodation. That is the purpose of this letter.

Attached you will find two amendments which we have agreed will accommodate the concerns of the Fertilizer Institute. There is yet a third amendment which you have suggested for purposes of clarifying the impact of the "release concept" on fertilizer applications, but we believe that will be unnecessary since it is our intention to seek a broader and more comprehensive clarification **[Sec. 103(e)]**.

This more comprehensive clarification would have the same effect on fertilizer applications as your narrower amendment. That is, it would exclude normal applications of fertilizer from the class of prohibited releases.

As soon as we receive your confirmation of this understanding we will, without delay, introduce the amendments and urge their adoption during markup of S. 1480.

Truly,

JENNINGS RANDOLPH,
*Chairman.*

ROBERT T. STAFFORD,
*Ranking Minority Member.*

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THE FERTILIZER INSTITUTE,
*Washington, D.C., November 27, 1979.*

Hon. JENNINGS RANDOLPH,
*Chairman, Committee on Environment and Public Works, Washington, D.C.*

Hon. ROBERT T. STAFFORD,
*Ranking Minority Member, Committee on Environment and Public Works, Washington, D.C.*

DEAR CHAIRMAN RANDOLPH and SENATOR STAFFORD: Reference is made to your letter addressed to me dated November 14, 1979, relating to S. 1480.

Your letter concisely and correctly captures the concerns of our industry. We are in agreement that the two proposed amendments, attached to aforesaid letter, are straightforward and do much to cure our concerns. We strongly support their adoption.

We think you may find helpful the enclosures herewith. In essence, we have returned the amendments and language we believe will be helpful to be included in the report of the Committee which would ordinarily accompany this bill. This suggested language has been carefully drawn to reflect the background of negotiations and circumscribe the extent of the amendments.

As to the "release concept" or the so-called third amendment, we concur that it is unnecessary, if, as we are confident you will cure this problem by "a broader and more comprehensive clarification" (last line, pg. 1, your letter of November 14, 1979). Your staff and mine seem to be on the way to laying this issue to rest and I am confident this will soon be accomplished.

The high degree of concern and skill of the Staff as well as your own in trying to solve a serious and vexatious national problem is to be commended. Frankly, the compromise and agreements are a reflection of the highest legislative skill that I have seen in many years.

We find that as amended, S. 1480 is acceptable to the nation's fertilizer industry and this letter may be used in Committee and made a part of the floor remarks to demonstrate an accommodation has been reached.

Respectfully,

EDWIN M. WHEELER.

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### PROPOSED LEGISLATIVE HISTORY [Sec. 211]

There is some possible lack of clarity in the Committee's use of the phrase "fertilizer production industry" in connection with the exemption proposed in revised section 5(c)(3)(B)(1). To avoid any possible misunderstanding the following legislative history language is suggested:

The Committee intends that the term "fertilizer production industry" as used in section 5(c)(3)(B)(1) to read to include those activities and products as are described and set forth in the Standard Industrial Classification Manual (OMB, 1972 Edition) and identified therein as SIC Code Numbers: 1474, 1475, 2873, 2873112, 2874, 2874185, 28193, 2819922 and 2819331.

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### LEGISLATIVE HISTORY [Sec. 101(20)(B)]

During the course of transporting hazardous and toxic materials, accidents occur when the circumstances were beyond the control of the owner of the substance involved. The most common example of such incidents is a railroad derailment resulting from tracks which are inadequate for the loads being shipped over them or through the negligence of railroad personnel. Since such circumstances are clearly beyond the control of the owner of the product, the owner should not be held liable.

However, in those cases where the product owner does exercise control over the condition which resulted in the release, then liability should be imposed. It is intended that liability be imposed on the product owner only where there has been some culpability and reasonable action on the part of said product owner would have prevented the release.

● Mr. CULVER. Mr. President, we have seen that the disastrous leakage of chemicals in such dumps as the La Bounty Site in Charles City, Iowa, or the Love Canal in New York, can cause premature death and irreversible damage to the health of an unsuspecting public. And, in other cases, such as the contamination of Lake Erie with the insecticide Mirex, and the release of polychlorinated biphenyls (PCB's) into the Hudson River, we have seen that the economic losses from a single release can add up to tens of millions of dollars, or even hundreds of millions of dollars, very quickly.

As part of the Resource Protection Subcommittee's review of proposals to help clean up these and other abandoned dumpsites and protect the public from hazardous wastes, the subcommittee, which I chair, is considering S. 1480, which I sponsored along with several other members of the Public Works Committee.

As you know, this legislation includes a fund to minimize damage and to compensate those who suffer losses from dumpsites of hazardous wastes, and sets new, tougher standards of liability for those who manufacture, transport, use and dispose of toxic chemicals.

However, certain parts of S. 1480 need to be clarified. Various agricultural organizations, including the fertilizer industry and the Iowa Farm Bureau Federation, have expressed concern that this legislation would have an unintended effect on the normal, everyday use of commercial fertilizers and farming.

The use of fertilizer for agriculture is, of course, of critical importance to Iowa, and I want the record to indicate that it is not the intent of S. 1480 to affect normal commercial fertilizer use. In order to clarify any misunderstandings, therefore, I join with my colleagues today in sponsoring two amendments to emphasize this point. A further amendment, which will be made in redrafting this bill for consideration next year, will make it clear that farmers will not be liable for normal field application of fertilizers.

The first of these amendments concerns the fee imposed on industries under S. 1480. There is no fee on farming, but a fee would be imposed on several industries that produce or use chemicals. These fees are intended to provide the money that would pay for cleanup and compensation costs resulting from a spill or dumpsite leakage. These fees would be used to pay only those victims who cannot obtain compensation from the parties responsible for the chemical release.

It is not the intention of this legislation to force responsible firms and industries to pay for those who handle their products irresponsibly. For this reason, this amendment would initially exempt fertilizers from the proposed fee system **[Sec. 211]**. Fertilizer producers and users would remain exempt as long as they maintain a good record. This is not intended to ignore the fact that fertilizer chemicals can be hazardous if spilled. However, the fertilizer companies and farmers themselves have a good record in responding promptly and effectively to spills. As long as this remains the case, there will be no need for Government intervention and no need for a fee on fertilizers.

The second amendment clarifies the intent with regard to liability for an accident during transportation of fertilizers or any other potentially harmful substance **[Sec. 101(20)(B)]**. This amendment makes it clear that if a manufacturer exercises good care, and if an accident is caused by events wholly outside the manufacturer's control, then the manufacturer would not be liable for damage caused by a spill. However, if a manufacturer fails to exercise due care (such as by failing to properly lable or properly package) and if that failure contributes to damage, then the manufacturer could be held liable.

In closing, Mr. President, I want to acknowledge the comments provided by Mr. Edwin Wheeler, president of the Fertilizer Institute; Winton Etchen, executive vice president of the Iowa Fertilizer & Chemical Association, Inc.; and Dean Kleckner, president of the Iowa Farm Bureau Federation. Their views were most helpful, and I believe these proposed amendments will be fully considered as the subcommittee continues to develop legislation which will effectively address our hazardous waste problems.●

[From the Congressional Record, Aug. 1, 1980, p. S10578]

## ENVIRONMENTAL EMERGENCY RESPONSE ACT—S. 1480

### AMENDMENT NO. 1958

(Ordered to be printed and to lie on the table.)

Mr. MAGNUSON submitted an amendment intended to be proposed by him to S. 1480, a bill to provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

### OIL SPILL LIABILITY ACT

Mr. MAGNUSON. Mr. President, S. 1480 addresses the subject of liability, compensation and cleanup for hazardous substance releases and spills. However, an issue of long concern to me is the inequitable and still unaddressed problems facing persons who are damaged by oil spills. The Congress has been working on this problem since the 94th Congress but still no resolution exists.

The amendment I am submitting today is very similar to the bill which the Committee on Commerce, Science, and Transportation reported last Congress, and legislation which I introduced earlier this Congress on this issue.

This legislation would establish a comprehensive and uniform system for fixing liability and settling claims for oil pollution damages in U.S. waters. This legislation is of great national importance as we seek to meet our energy needs in an environmentally sound manner. Those energy needs will probably result in accelerated development of our offshore oil and gas resources, the use of tankers, underwater pipelines, and the development of deepwater ports. This proposal would provide a broad range of protection against adverse economic impacts of the oil spills potentially associated with these activities.

In recent years, we have taken significant steps to limit and control oil pollution in the waters of the United States. The Port and Tanker Safety Act of 1978, which I authored during the last Congress, establishes the most stringent tanker construction and safety requirements in the world, and it encourages the Coast Guard to proceed unilaterally with even tougher national standards.

We have demonstrated our ability to reduce oil pollution despite an increase in the transportation of oil. Yet, as the incidents involving the *Argo Merchant,* the *Olympic Games* and the *Amoco Cadiz* demonstrate, oil spills continue to occur; and one-third of the oil spilled is from unidentifiable sources, where compensation cannot be obtained under existing law. Inconsistency among laws creates severe confusion and imposes unnecessary burdens on oil producers, taxpayers, and consumers through duplication of administrative costs and fee payments.

There is no reason why those persons damaged by oil spills should be forced to resort to costly and uncertain litigation in order to be made whole. Although there is Federal legislation in place that deals with the cleanup of oil spills, existing law still does not deal adequately with third party damages. Thus, damaged persons may still have no means to be compensated for their losses that may result from an oil spill.

For example, one of the roots of the problem is the 1851 Limitation of Liability Act, which limits the liability of a tanker owner for an oilspill to the value of the vessel after the accident. As the *Torrey Canyon, Argo Merchant,* and *Amoco Cadiz* disasters vividly demonstrate, this could well result in no liability for the tanker owner.

Up until the present time, it has been determined that innocent parties—the property owner and the fisherman—should bear the risks and costs of oil pollution damage from tanker operations. This state of the law cannot be allowed to continue. It is inadequate, illogical, and inequitable. This legislation would change this situation and shift the economic responsibility for such spills to those who present the risk and directly benefit from the transportation of oil—the shipowner and the oil industry.

This legislation would cover liability for all oil spills into our waters whether from tankers, oil terminals, pipelines, and would insure that property owners, fishermen, and other people who use and depend on our marine environment have a quick and equitable means for full compensation should an oil spill adversely impact them.

III

AMENDMENT NO. 1958 Calendar No. 933

Purpose: To establish an equitable and comprehensive liability regime for oil spills, and for other purposes.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

August 1 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. MAGNUSON

Viz: Add the following as a new and additional title:

SECTION 1. This title may be cited as the "Oil Spill Liability Act".

### SEC. 2. DEFINITIONS.

As used in this title, unless the context otherwise requires, the term—

(1) "barrel" means 42 United States gallons at 60 degrees Fahrenheit;

(2) "claim" means a claim, made in writing for a sum certain, for compensation under this title for damages or cleanup costs resulting from a discharge of oil;

(3) "cleanup costs" means all actual and reasonable costs incurred by any person in—

(A) removing or attempting to remove oil resulting from an incident; or

(B) taking other measures after an incident has occurred to prevent, reduce, or mitigate oil damages to private property, or public health, property, or welfare resulting from such incident, including shorelines, beaches, or natural resources;

(4) "damages" means damages for which compensation may be claimed as set forth in section 5;

(5) "discharge" includes any spilling, leaking, pumping, pouring, emptying, or dumping of oil, however caused—

(A) in an unlawful quantity or at an unlawful rate—

(i) in or on the navigable waters or their connecting or tributary waters within the United States or immediately adjacent thereto; or

(ii) in or on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

(B) in or on the waters of the high seas outside the territorial limits of the United States—

(i) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.), or the Deepwater Port Act of 1974, as amended by this Act (33 U.S.C. 1501 et seq.);

(ii) which may cause injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

(iii) when such oil was discharged from a ship which received such oil at the terminal of the pipeline authorized by the Trans-Alaska Pipeline Authorization Act, as amended by this Act (43 U.S.C. 1651 et seq.), for transportation to a port in the United States, and was discharged from such ship prior to being brought ashore in such a port; or

(C) in or on the territorial sea, internal waters, or adjacent shoreline, of a foreign country, if damages and cleanup costs are recoverable by a foreign claimant under section 5;

(6) "facility" means a structure or group of structures (other than a vessel or vessels which are not an integral part of any such structure or structures) used for the purpose of transporting, producing, processing, storing, transferring, or handling oil which is within, or subject to the jurisdiction of, the United States;

(7) "fund" means the Oil Spill Compensation Fund established pursuant to section 6;

(8) "incident" means any occurrence, or series of occurrences, involving one or more vessels, a facility, or any combination thereof, which causes, or poses an immiment threat of, a discharge of oil;

(9) "insurer" means any person who provides, in accordance with section 10, evidence of financial responsibility for the owner or operator of a vessel or a facility;

(10) "natural resources" means land, fish, wildlife, biota, air, water, and other such resources owned, managed, held in trust, or otherwise controlled by the Federal Government (including the fishery resources of the fishery conservation zone established by section 101 of the Fishery Conservation and Management Act

of 1976 (16 U.S.C. 1811)), any State or local government, or any foreign government;

(11) "oil" means oil of any kind (except animal or vegetable oils), in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredge spoil;

(12) "operator" means any person who is responsible for the operation, manning, victualizing, and supplying of a vessel or who charters by demise such vessel;

(13) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a vessel or facility, except that the term does not include a person who, without participating in the management or operation of a vessel or facility, holds indicia of ownership primarily to protect a security interest in such vessel or facility;

(14) "person" means an individual, a public or private corporation, partnership or other association, or a governmental entity;

(15) "person in charge" means the individual immediately responsible for the operation of a vessel;

(16) "public vessel" means a vessel which is owned, or chartered by demise, and operated by the United States, any State or subdivision thereof, or any

foreign government; and is not engaged in commercial service;

(17) "refinery" means a terminal which receives crude oil for the purpose of refinement;

(18) "Secretary" means the Secretary of Transportation;

(19) "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States;

(20) "terminal" means any permanently situated facility which is located within the territorial limits of the United States; is not owned by any agency of the Federal Government; and receives oil in bulk directly from any vessel or facility; and

(21) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation through or on water.

## SEC. 4. LIABILITY.

(a) IN GENERAL.—Notwithstanding any other provisions of law, or rule of law, according to the following provisions of this section, the owner and operator of a vessel (other than a public vessel), or a facility, which is the source of, or poses an imminent threat of, a discharge of oil, shall be jointly, severally, and strictly liable for all damages and cleanup costs for which a claim is asserted under this title.

(b) LIMITS OF LIABILITY.—Except as provided in subsection (d), the liability of the owner or operator of a vessel or a facility under subsection (a), including cleanup costs incurred on behalf of such owner or operator, shall not exceed—

(1) $150 for each gross ton of any vessel which does not carry oil in bulk as cargo;

(2) $500,000, or $300 for each gross ton, whichever is greater, of any vessel which carries oil in bulk as cargo; or

(3) for any facility, $50,000,000 or such lesser amount as is established under subsection (c).

(c) ESTABLISHING LIMITS FOR CLASSES.—The Secretary shall establish, by regulation, limits of liability, up to $50,000,000, for classes of facilities, except that the limits of liability for any deepwater port or offshore oil production facility shall not be less than $50,000,000. In establishing such limits, the Secretary shall take into account the size, type, location, oil storage and handling capacity of such classes of facilities, and other matters relating to the likelihood of incidents resulting from the facilities in each such class. Such limits shall, to the extent practicable, be comparable to limits set forth in subsection (b), taking into account the relative possibilities of a discharge of oil.

(d) COMPLETE LIABILITY.—Notwithstanding the provisions of subsection (b), the liability of the owner or operator of a vessel or facility under subsection (a), including cleanup costs incurred on behalf of such owner or operator, shall be the full extent of the damages and cleanup costs resulting from a discharge of oil if the—

(1) incident is caused by gross negligence or willful misconduct within the privity or knowledge of the owner or operator;

(2) incident is caused by a gross or willful violation, by the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government; or

(3) owner or operator fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities.

(e) DEFENSES.—There shall be no liability under subsection (a)—

(1) if the incident is caused solely by—

(A) an act of war, hostilities, civil war, or insurrection, or by a natural phenomenon of an exceptional, inevitable, and irresistible character, and such incident could not have been prevented or avoided by the exercise of due care or foresight; or

(B) an act or omission of a person other than (i) the claimant, (ii) the owner or operator, (iii) an employee or agent of the claimant, the owner, or the operator, or (iv) one whose act or omission occurs in connection with a contractual relationship with the claimant, the owner, or the operator;

(2) as to a particular claimant, if the incident or loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(3) as to a particular claimant, to the extent that the incident or loss is caused by the negligence of that claimant.

(f) INTEREST.—(1) In addition to the damages and cleanup costs for which claims may be asserted under this title, and without regard to the limitation of liability provided for in subsection (b), the owner, operator, or insurer of the vessel or facility which is the source of a discharge of oil shall be liable to any claimant for interest on the amount paid in satisfaction of the claim, pursuant to section 6, for the period from the date upon which the claim was presented to such owner, operator, or insurer to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or insurer offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim to the date upon which the claimant accepts that amount, inclusive. However, if such owner, operator, or insurer offers to the claimant, within 60 days after the date upon which the claim was presented, or after the date upon which advertising was commenced pursuant to section 9, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, then such owner, operator, or insurer shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(2) The interest provided for in paragraph (1) shall be calculated by the Secretary at the average of the highest rate for commercial and finance company paper of maturities of 180 days or less, obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(g) ADJUSTMENT OF LIMITS.—The Secretary shall, from time to time, report to the Congress on the desirability of and, where appropriate, recommendations on adjusting the limits of liability contained in this section. In considering any such recommendation, the Secretary shall publish any proposed recommendation in the Federal Register and provide 30 days for any interested party to submit comments.

(h) PROHIBITION.—No indemnification, hold harmless, or similar agreement shall be effective to transfer from the owner or operator of a vessel or facility to any other person the liability provided for under this title, other than as specified under the provisions of this title.

### SEC. 5. RECOVERABLE DAMAGES AND CLAIMANTS.

(a) DAMAGES.—Claims for damages for loss resulting from a discharge of oil may be asserted under this title for:

(1) cleanup costs;

(2) personal injury;

(3) injury to, or destruction of, real or personal property;

(4) loss of use of any real or personal property;

(5) injury to, or destruction of, natural resources;

(6) loss of use of any natural resources, without regard to ownership of such resources;

(7) loss of profits or impairment of earning capacity resulting from any damage to, or destruction of real or personal property, or natural resources; and

(8) loss of tax, royalty, rental, or net profits share revenue by the Federal Government or any State or local government, for a period of not to exceed 1 year.

(b) TRUSTEE OF NATURAL RESOURCES.—The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for damages to such resources. Sums recovered shall, whenever practicable, be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or such State.

(c) FOREIGN CLAIMANTS.—Claims for compensation for damages and cleanup costs may be made under this title by any citizen of a foreign nation or by any foreign nation if such damages or cleanup costs resulted from a discharge of oil, or threat of a discharge of oil, from—

(1) an incident occurring in the navigable waters of the United States;

(2) a vessel carrying oil as cargo between two ports subject to the jurisdiction of the United States; or

(3) a facility located in the United States or subject to the jurisdiction of the United States.

### SEC. 6. OIL SPILL COMPENSATION FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the Oil Spill Compensation Fund (hereinafter referred to as "the Fund"). The Fund shall be administered by the Secretary and the Secretary of the Treasury in accordance with the provisions of this title. The Fund may sue and be sued in its own name.

(b) CONTENT.—The Fund shall be constituted from—

(1) all fees collected pursuant to section 7;

(2) all moneys recovered through subrogation under section 8;

(3) interest on, and the proceeds from the sale of, special obligation bonds of the United States, as provided in subsection (e); and

(4) amounts received by the Secretary from the sale or issuance of notes or other obligations under subsection (f).

(c) LIABILITY OF THE FUND.—(1) Subject to the provisions of paragraph (2), the Fund shall be liable for all damages and cleanup costs for which a claim may be asserted under this title, to the extent that the loss is not otherwise compensated on behalf of the owner or operator involved.

(2) Except for cleanup costs incurred under the provisions of law specified in subsection (d)(2), there shall be no liability under paragraph (1)—

(A) where the incident is caused primarily by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(d) DISBURSEMENTS.—The Secretary may use the money in the Fund solely for the following purposes:

(1) The payment of any valid claim for damages presented according to the provisions of this title.

(2) The payment of any valid claim for cleanup costs incurred by any claimant.

(3) Administrative and personnel costs of the Federal Government incident to administration of the Fund, including costs relating to claims settlement, and adjudicatory and judicial proceedings, whether or not such costs are recoverable under section 8, after appropriation in an appropriations Act.

(4) After appropriation in an appropriations Act, the cost of assessing injury to or the destruction of natural resources resulting from a discharge of oil, such assessment to be undertaken by the National Oceanic and Atmospheric Administration, in coordination with the Fish and Wildlife Service and the Environmental Protection Agency.

Moneys in the Fund shall be immediately available for payment of cleanup costs incurred under subsections (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), section 5 of the Intervention on the High Seas Act (33 U.S.C. 1474), or section 18(b) of the Deepwater Port Act of 1974, as amended (33 U.S.C. 1517(b)), and may be obligated for such purpose by any person so designated by the Secretary.

(e) INVESTMENT.—The Secretary of the Treasury may invest any portion of the moneys in the Fund which the Secretary determines is not immediately required to meet the potential obligations of the Fund. Such investments shall be made only in interest-bearing special obligations of the United States. Any such obligations that are issued to the Fund may be redeemed at any time, in accordance with the terms of the special issue and regulations promulgated by the Secretary of the Treasury in cooperation with the Secretary. The interest on, and the proceeds from the sale of, any such obligations shall be credited to and form a part of the Fund.

(f) INSUFFICIENCY.—If the money available in the Fund is not sufficient to pay any amount which the Fund is obligated to pay under this title, the Secretary shall issue to the Secretary of the Treasury notes or other obligations (only to such extent and in such amounts as may be provided for in appropriations Acts) in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury prescribes. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States on comparable maturities during the month preceding the issuance of such notes or other obligations. Any sums received by the Secretary through such issuance shall be credited to the Fund. The Secretary of the Treasury shall purchase any notes or other obligations issued under this subsection, and for this purpose such Secretary may use, as a public debt transaction, the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force. The purposes for which securities may be issued under that Act are extended to include any purchase of notes or other obligations issued under this subsection. The Secretary of the Treasury may at any time sell any of the notes or other obligations so acquired under this subsection. All redemptions, purchases, and sales of such notes or other obligations by the Secretary of the Treasury shall be treated as public debt transactions of the United States.

(g) ANNUAL REPORT.—Within 6 months after the end of each fiscal year, the Secretary shall submit to the Congress (1) a report on the administration of the Fund during such fiscal year, and (2) recommendations for such additional legislative authority as may be necessary to improve the management of the Fund and the administration of the liability provisions under this title.

### SEC. 7. OIL CARGO LIABILITY FUND FEE.

(a) ESTABLISHMENT OF THE FEE.—There is hereby established a fee, of not more than 3 cents per barrel, to be levied on each barrel of crude oil received at any refinery and on each barrel of oil received at any terminal for export from or entry into the United States. Oil on which a fee has been levied under this subsection shall not be subject to any subsequent such levy.

(b) COLLECTION OF THE FEE.—The Secretary of the Treasury shall collect the fee established by subsection (a) from (1) the owner of any refinery receiving crude oil and (2) the owner of any terminal receiving oil for export from or entry into the United States, whether for import or transfer to a foreign country. The person who owns such oil shall be obligated to reimburse the owner of such refinery or terminal, as the case may be, the full amount of the fee levied on the oil of that person and paid by the owner of the refinery or terminal.

(c) FEE SCHEDULE.—The Secretary of the Treasury, after consultation with appropriate Federal agencies, may promulgate and, from time to time, amend regulations relating to the collection of fees under this section, including the establishment of a fee schedule. Any such fee schedule shall be designed to insure that the Fund is maintained at a level which, along with all other moneys covered into the Fund, is sufficient to meet the obligations of the Fund, but in no case more than $250,000,000. No regulation establishing a fee schedule, or any amendment of such regulation, whether or not in effect, may be stayed by any court pending completion of judicial review of such regulation or amendment.

(d) PENALTIES.—Any person who fails to collect or pay any fee required under this section shall be liable for (1) a civil penalty of not to exceed $10,000, to be assessed by the Secretary of the Treasury; (2) the amount of the fee required to be collected or paid; and (3) the amount of interest that would have been earned by such fee if it had been collected or paid when due and invested in special obligations of the United States. The Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the Fund against any person who fails to pay any fee required under this section, or any amount for which such person is liable under this subsection.

(e)(1) RECORDS.—The Secretary of the Treasury may, by regulation, require persons from whom fees are to be collected pursuant to this section to keep such records and documents as the Secretary deems necessary. The Secretary of the Treasury and the Comptroller General of the United States shall have access to such records and documents for the purpose of audit and examination.

(2) Any person who falsifies records or documents required to be kept under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

### SEC. 8. SUBROGATION.

(a) GENERAL.—Any person, including the Fund, who pays compensation pursuant to this title to any claimant for damages or cleanup costs resulting from an incident, shall be subrogated to all rights, claims, and causes of action for such damages and cleanup costs as such claimant has under this title or any other law.

(b) ACTION TO RECOVER.—Upon request of the Secretary, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this title, and, without regard to the limitation of liability provided for in section 4(b), all costs incurred by the Fund by reason of the claim, including interest, administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any owner, operator, or insurer, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages for which the compensation was paid.

### SEC. 9. CLAIMS PROCEDURES.

(a) IN GENERAL.—The Secretary shall prescribe, and may from time to time amend, regulations for the filing, processing, settlement, and adjudication of claims under this title, including uniform procedures and standards for the appraisal and settlement of claims against the Fund.

(b) NOTIFICATION.—The person in charge of a vessel or facility, which is involved in an incident, shall immediately notify the Secretary of the incident as soon as he has knowledge thereof. Notification received pursuant to this subsection, or information obtained by the exploitation of such notification, shall not be used against any such person or his employer in any criminal action, other than an action involving prosecution for perjury or for giving a false statement.

(c) IDENTIFYING THE SOURCE OF AN INCIDENT.—When the Secretary receives information, pursuant to subsection (b) or otherwise, of an incident which involves a discharge of oil, the Secretary shall, where possible—

(1) identify the source of such discharge; and

(2) immediately notify the owner, operator, and insurer of the vessel which is the source of such discharge of such identification.

(d) ADVERTISEMENTS.—(1) If the source of a discharge of oil, identified by the Secretary under subsection (c), is a private vessel or facility, then the owner, operator, or insurer of such vessel or facility shall, within 15 days after being notified by the Secretary of such identification, begin to advertise such identification along with a description of the procedures to be followed for presenting claims to the owner, operator, or insurer, except that such owner, operator, or insurer shall not have the duty of making such advertisement if—

(A) such owner, operator, or insurer denies liability for such discharge of oil; and

(B) notifies the Secretary of such denial within 10 days after receiving notice from the Secretary of such identification.

Any owner, operator, or insurer who denies liability for a discharge of oil, as provided in this subsection, and who is subsequently found to be liable for the damages or cleanup costs resulting from such discharge, shall be liable, in addition to whatever other such costs or damages for which they might be liable, for the costs of making the advertisements he otherwise should have made under this subsection.

(2) The Secretary shall make advertisements of a discharge of oil, along with a description of the procedures to be followed in presenting claims to the Fund, where—

(A) the source of the discharge is from a public vessel;

(B) the Secretary is unable to identify the source of the discharge; or

(C) the owner, operator, and insurer each deny liability for the discharge of oil.

(3) Advertisements made under the provisions of this subsection shall—

(A) begin within 15 days after the date the Secretary notifies the owner, operator, or insurer of the identification under subsection (b), or within 15 days after the Secretary determines that the source of the discharge cannot be identified or the source is a public vessel;

(B) continue for at least 30 days thereafter; and

(C) be carried in a newspaper of general circulation in the vicinity of the discharge for which such advertisement is being made.

(e) PRESENTATION OF CLAIMS.—(1) Except as provided in paragraph (2), all claims shall be first presented to the owner, operator, or insurer of the vessel or facility which is the source of the discharge of oil resulting in the cleanup costs or damages for which such claim is presented.

(2) Claims shall be first presented to the Fund—

(A) if the Secretary has advertised or otherwise notified claimants in accordance with subsection (d)(2); or

(B) by any owner or operator for cleanup costs incurred on behalf of such owner or operator if such owner or operator—

(i) is entitled to a defense to liability under section 4(d), or

(ii) is entitled to a limitation of liability under section 4(b) and the claim is only for the amount of cleanup costs incurred in excess of such limit of liability.

(3) If a claim is presented in accordance with paragraph (1) and—

(A) the person to whom the claim is presented denies all liability for the claim, for any reason; or

(B) the claim is not settled by any person by payment to the claimant within 60 days after the date upon which (i) the claim was presented, or (ii) advertising was commenced pursuant to subsection (d)(1), whichever is later;

then the claimant may elect to commence an action in court against the owner, operator, or insurer involved, or to present the claim to the Fund, such election to be irrevocable and exclusive.

(4) If a claim is presented in accordance with paragraph (1), and full and adequate compensation in unavailable, either because the claim exceeds a limit of liability invoked under section 4(b) or because the owner, operator, and insurer involved are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Fund.

(5) If a claim which has been presented to any person, pursuant to paragraph (1), is being presented to the Fund, pursuant to paragraph (3) or (4), that person to whom the claim was first presented, at the request of the claimant, shall transmit the claim and supporting documents to the Fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

(6) If the Fund—

(A) denies all liability for a claim, for any reason, presented to it under paragraph (2), (3), or (4); or

(B) does not settle such a claim by payment to the claimant within 60 days after the date upon which (i) the claim was presented to the Fund, or (ii) advertising was commenced pursuant to subsection (d)(2), whichever is later;

then the claimant may submit the claim to the Secretary for settlement, except that a claimant who has presented a claim to the Fund pursuant to paragraph (2) may elect to commence an action in court against the Fund in lieu of submission of the claim to the Secretary for settlement, that election to be irrevocable and exclusive.

(f) SETTLEMENT OF CLAIMS.—(1) Except as provided in paragraph (2), the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the Secretary that advertising is not reasonably practicable. Notwithstanding any other provision of law, the Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made pursuant to this subsection. A payment to one claimant for a single claim in excess of $100,000, or payment of two or more claims of one claimant aggregating in excess of $200,000, shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on or on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

(2) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the Fund.

(g) CLAIMS SETTLEMENTS BY THE SECRETARY.—(1) Upon receipt of a request to settle claims under the provisions of subsection (e)(6), the Secretary shall refer such claim to either an administrative law judge, appointed under section 3105 of title 5, United States Code, or to a panel appointed by the Secretary as provided under subsection (h). Upon referral of a claim, the administrative law judge or panel, as the case may be, shall adjudicate such claim and render a decision on the record after an opportunity for an agency hearing.

(2) In any proceeding conducted by an administrative law judge or panel under the provisions of this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with procedures in section 555(d) of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary

may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(3) A hearing conducted under this subsection shall be conducted within the United States judicial district within which the cleanup costs were incurred or the damage complained of occurred, or, if such costs were incurred or such damage occurred within more than one district, in any of the affected districts, or, if such costs were incurred or such damage occurred outside any district, in the nearest district.

(4) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with rules which he may promulgate, may review the decision upon his own initiative or upon exception of the claimant or the Fund.

(h) JUDICIAL REVIEW.—(1) Any party who suffers legal wrong or who is adversely affected or aggrieved by any final order, act or omission of the Secretary under this title may, not later than 60 days after the date of publication of such order, or not later than 60 days after such act or omission occurred or should have occurred, petition for judicial review of such order in the appropriate United States district court.

(2) In the case in which (A) the person responsible for the discharge of oil, or (B) the Fund, seeks judicial review under this section, attorneys' fees and court costs shall be awarded to the claimant if the final order of the Secretary under subsection (g)(4) is upheld.

(i) ESTABLISHMENT AND APPOINTMENT OF PANELS.—(1) The Secretary is authorized to establish, from time to time, and to appoint the members of, panels to settle claims submitted to him under subsection (e)(6). A panel established under this subsection shall terminate 180 days after it was established.

(2) Each panel shall consist of three members, at least one of whom (who shall be the presiding member) shall be qualified to conduct adjudicatory proceedings. Each member of the panel shall be appointed from among individuals who, by their education, training, or experience, are competent to evaluate and assess property damage and the economic losses resulting therefrom. Each panel member, in addition, may be appointed without regard to whether such member is or has been employed by any governmental entity, except members of the staff administering the Fund shall not be appointed to any panel.

(3) Each member of a panel who is not otherwise employed by the Federal Government shall be entitled to receive compensation of $100 per day (including traveltime) for each day during which he is engaged in the actual performance of the duties of the panel. Each member of a panel who is an employee or officer of the Federal Government shall serve on a panel without additional compensation therefor. In addition, while away from their homes or regular places of business in the performance of the duties of the panel, each member of a panel shall be allowed travel expenses, including per diem in lieu of subsistence, according to the provisions of chapter 57 of title 5, United States Code.

(4) The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, shall apply to each panel member who is not otherwise employed by the Federal Government.

(5) Each member of a panel, and the administrative law judge, to which a claim is referred under subsection (g), shall be a resident of the United States judicial district within which the cleanup costs were incurred or the damage complained of occurred, or, if such cleanup costs were incurred or such damage occurred within more than one district, of any of the affected districts, or, if such cleanup costs were

incurred or such damage occurred outside any district, of the nearest district.

(j) NOTICE OF ACTIONS.—(1) In any action brought against an owner, operator, or insurer, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Fund at the same time as those pleadings are served upon the opposing parties. The Fund may intervene in any such action as a matter of right. If the Fund receives from either the plaintiff or the defendant notice of such an action, the Fund shall be bound by any judgment entered therein, whether or not the Fund was a party to the action.

(2) In any action to which the Fund is a party, if the owner, operator, or insurer admits liability under this title, the Fund, upon its motion, shall be dismissed therefrom.

(3) If neither the plaintiff nor the defendant gives notice of such an action to the Fund, the limitation of liability otherwise permitted by this title shall not be available to the defendant, and the plaintiff shall not recover from the Fund any sums not paid by the defendant.

(4) In any action brought against the Fund, the plaintiff may join any owner, operator, or insurer, and the Fund may implead any person who is or may be liable to the Fund under any provision of this title.

(k) DIRECT ACTION.—In defending any claim asserted directly against any insurer of an owner's or operator's liability under this title, such insurer—

(1) shall be entitled to invoke all rights and defenses which would be available to the owner or operator under this title; and

(2) shall not be entitled to invoke any other defense which he might have been entitled to invoke in proceedings brought by the owner or operator against him.

(l) EXPIRATION DATES.—No claim may be presented, nor may an action be commenced for damages recoverable under this title, unless such claim is presented to, or that action is commenced against, the owner, operator, or insurer, or against the Fund, as to their respective liabilities, within 3 years after the date of discovery of the economic loss for which a claim may be asserted under this title, or within 6 years after the date of the incident which resulted in that loss, whichever is earlier.

### SEC. 10. FINANCIAL RESPONSIBILITY.

(a) GENERAL.—(1) The owner or operator of any vessel (except a public vessel and any non-self-propelled barge that does not carry oil as cargo) over 300 gross tons which uses any facility or the navigable waters shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to satisfy the limits of liability applicable to that vessel under section 4 and section 311 of the Clean Water Act. Certificates shall be furnished to such owner or operator as evidence that the requirements of this subsection have been complied with.

(2) The Secretary of the Treasury shall deny the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. 91) to any vessel subject to this subsection which does not have a valid certificate of compliance issued under paragraph (1).

(3) The Secretary, in accordance with regulations promulgated by him, shall—

(A) deny entry to any port or place in the United States or navigable waters; and

(B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States;

any vessel subject to this subsection which, upon request, does not produce a valid certificate of compliance issued under paragraph (1).

(b) Evidence.—Financial responsibility may be established by any one, or any combination, of the following methods acceptable to the Secretary:

(1) An insurance policy.

(2) A guarantee.

(3) A surety bond.

(4) Qualification as a self-insurer.

Any bond filed shall be issued by a bonding company authorized to do business in any State.

### SEC. 11. CONSOLIDATED ACTIONS.

(a) Actions by Attorney General.—The Attorney General may act on behalf of any group of persons which the Secretary determines would be more adequately represented as a group in the recovery of claims under this title. Sums recovered shall be distributed to the members of any such group.

(b) Other Actions.—If, within 90 days after the date of a discharge of oil, the Attorney General does not act on behalf of a group the members of which may be entitled to compensation under this title, any member of such group may maintain a consolidated action to recover such compensation on behalf of such group. That the Attorney General has not acted within such 90 days shall have no bearing on any action maintained by any member of such group under this subsection.

(c) Notice.—If the number of members of any such group exceeds 1,000, publishing notice of the action in the Federal Register and in local newspapers of general circulation in the areas in which the members of such group reside shall be deemed sufficient to fulfill the requirements for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure.

### SEC. 12. PUBLIC ACCESS TO INFORMATION.

(a) GENERAL.—To the extent required by section 552 of title 5, United States Code, copies of any communication, document, report, or information transmitted between any official of the Federal Government and any person concerning liability and compensation for damages or cleanup costs resulting from a discharge of oil shall be made available to the public for inspection, and shall be available to the public upon identifiable request, for the purpose of reproduction at a reasonable cost.

(b) RELEASE.—Nothing contained in this section shall be construed to require the release of any information of the kind described in section 552(b) of title 5, United States Code, or which is otherwise protected by law from disclosure to the public. For the purposes of this section, any contractor acting on behalf of the Secretary pursuant to section 9(f), and any employee of such contractor, shall be deemed an employee of the Secretary for the purposes of this section.

### SEC. 13. JURISDICTION, AND VENUE.

(a) IN GENERAL.—The district courts of the United States shall have exclusive original jurisdiction over all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

(b) VENUE.—Any action (including actions seeking judicial review) brought under this title shall be brought in any United States judicial district (1) wherein the cleanup costs were incurred or the damage complained of occurred; (2) if such costs were incurred or such damage occurred, outside of any district, in the nearest district; or (3) if such cost were incurred or such damage occurred in more than one district, in any affected district, or (4) in the district where the defendant resides, may be found, or has its principal office. For the purposes of this subsection, the Fund shall be deemed a resident of the District of Columbia.

## SEC. 14. PENALTIES.

(a) FINANCIAL RESPONSIBILITY.—(1) Any person who fails to comply with the requirements of section 10, the regulations promulgated thereunder, or any denial or detention order, shall be subject to a civil penalty of not more than $10,000.

(2) Such penalty may be assessed and compromised by the Secretary. No penalty shall be assessed until notice and an opportunity for hearing on the alleged violation has been given. In determining the amount of the penalty or the amount agreed upon in compromise, the demonstrated good faith of the party shall be taken into consideration.

(3) At the request of the official assessing the penalty, the Attorney General may bring an action in the name of the Fund to collect the penalty assessed.

(b) NOTIFICATION.—Any person in charge who fails to give the notification required by section 9(b) shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both.

### SEC. 15. RELATIONSHIP TO OTHER LAW.

(a) FUNDS.—No person may be required to contribute to any fund, by any Federal, State, or other law, the purpose of which is to pay compensation for any loss which may be compensated under this title. Nothing in this subsection shall preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase or prepositioning of oil discharge cleanup equipment or other preparations for the cleanup of an oil discharge which affects such State.

(b) FINANCIAL RESPONSIBILITY.—Except as provided in this title, no owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this title shall be required under any State law, rule, or regulation to establish any other evidence of financial responsibility in connection with liability for the discharge of oil from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this title shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such vessel or facility.

(c) STATE LAW.—(1) Except as provided in subsections (a) and (b), this title shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for damages and cleanup costs, within the jurisdiction of such State, resulting from a discharge of oil.

(2) Any person who submits a claim or commences an action for damages or cleanup costs under any State law shall be precluded from submitting a claim or commencing an action for the same damages or cleanup costs pursuant to this title. Any person who submits a claim or commences an action for damages pursuant to this title shall be precluded from submitting a claim or commencing an action for the same damages or cleanup costs under any State law.

(d) FEDERAL LAW.—In the case of conflict or inconsistency, the provisions of this title shall supersede all other provisions of Federal law.

### SEC. 16. CONFORMING AMENDMENTS.

(a) OUTER CONTINENTAL SHELF LANDS ACT.—Title III of the Outer Continental Shelf Lands Act Amendments of 1978 is hereby repealed.

(b) INTERVENTION ON THE HIGH SEAS ACT.—Section 17 of the Intervention on the High Seas Act (33 U.S.C. 1486) is amended to read as follows:

"SEC. 17. The Fund established under section 6 of the Oil Spill Liability Act shall be available to the Secretary for actions and activities, relating to oil pollution, taken under section 5 of this Act, and the revolving fund established under section 311(k) of the Federal Water Pollution Control Act (33 U.S.C. 1321(k)) shall be available for other actions and activities taken under section 5 of this Act.".

(c) DEEPWATER PORT ACT.—The Deepwater Port Act of 1974 (88 Stat. 2126) is amended as follows:

(1) In section 4(c)(1) strike "section 18(1) of this Act;" and insert in lieu thereof "section 10 of the Oil Spill Liability Act".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), (n), and clause (1) of subsection (m) of section 18 are deleted.

(3) Clause (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section.", and inserting in lieu thereof: "fund established under section 6 of the Oil Spill Liability Act".

(4) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d), respectively, and clauses

(2), (3), and (4) of subsection (m) are redesignated (1), (2), and (3), respectively.

(d) TRANS-ALASKA PIPELINE ACT.—(1) Subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(b)) is amended by inserting in the first sentence after "any area", the words "in the State of Alaska"; by inserting after "any activities", the words "related to the trans-Alaska oil pipeline"; and by inserting at the end of the subsection a new sentence to read as follows: "This subsection shall not apply to cleanup costs covered by the Oil Transportation by Vessel Liability Act.".

(2) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act is hereby repealed. The Trans-Alaska Pipeline Liability Fund is hereby abolished. All assets of that fund, as of the effective date of this section, shall be transferred to the Oil Cargo Liability Fund established by section 6 of this Act. The Oil Cargo Liability Fund shall assume any and all liability incurred by the Trans-Alaska Pipeline Liability Fund under the terms of subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act, and shall also assume any and all liability incurred by the officers or trustees in the execution of their duties involving the Trans-Alaska Pipeline Liability Fund, other than the liability of such officers or trustees for gross negligence or willful misconduct.

(3) The Secretary of the Interior shall certify to the Secretary the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the transfer of assets required under paragraph (2) is made. If the Secretary finds that—

(A) the total amount of the assets so transferred is greater than the total amount of the outstanding claims so certified, subject to paragraph (4) of this subsection, the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified shall constitute an advance payment toward payment of the fee due under section 7 of this Act on barrels of oil, and the Secretary may waive such fee until such time as the total amount of the fees so waived equals the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified; or

(B) the total amount of the assets so transferred is less than the total amount of the outstanding claims so certified, the Secretary shall increase by 2 cents per barrel the fee imposed under such section 7 on barrels of oil until such time as the total amount of the 2-cents-per-barrel increase so collected equals the difference between the amount of the certified outstanding claims and the amount of the transferred assets.

(4) In the event that the local amount of the actual claims settled is less than the total amount of the outstanding claims certified, the difference between these amounts shall be rebated by the Secretary directly to the operator of the trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(5) If an owner of oil (as that term is used in section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act) who prior to enactment of this Act paid fees to the operator of the pipeline for transfer to the Trans-Alaska Pipeline Liability Fund receives the benefit of an advance payment under paragraph (3) of this subsection for the collection or payment of fees established under section 7 of this Act, such owner of oil shall compute, based upon accepted accounting procedures, what the oil production tax and what the royalty paid to the State of Alaska would have been had payments not been made to the Trans-Alaska Pipeline Liability Fund in the amount of fees waived. The difference between the amounts so computed and amounts actually paid to the State of Alaska shall be paid by each such owner to the State of Alaska. Such owner shall make such payment to the State of Alaska during such time as the collection of payment of fees under section 7 of this Act is waived.

(6) For purposes of paragraphs (3) and (4), the term—

(A) "barrels of oil" means only barrels of oil which would, but for the repeal made by paragraph (1), be subject to the fee imposed under section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act; and

(B) "Secretary" means the Secretary of the Treasury.

[From the Congressional Record, Aug. 5, 1980, p. S10845]

# ENVIRONMENTAL EMERGENCY RESPONSE ACT—S. 1480

## AMENDMENT NO. 1965

(Ordered to be printed and to lie on the table.)

Mr. **GRAVEL** submitted an amendment intended to be proposed by him to S. 1480, a bill to provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

## OIL POLLUTION LIABILITY AND COMPENSATION ACT OF 1980

● Mr. **GRAVEL**. Mr. President, I am submitting for printing an amendment to S. 1480, the Environmental Emergency Response Act, called the Oil Pollution Liability and Compensation Act of 1980. This provision creates a Federal trust fund for the payment of claims due to oil spills supported by a tax on oil produced or consumed in the United States.

This measure will help to protect the valuable fisheries resources of the United States. Money in the fund is to be used, in part, for the restoration, rehabilitation and replacement of natural resources injured or destroyed by oil spills. These funds can be used to replace natural resources destroyed by oil spills regardless of whether they are privately owned, or administered by State or Federal agencies.

Fisheries are one of America's most important natural resources and Alaska is one of America's most important fisheries. This amendment addresses a problem which we have experienced in Alaska, but which is not unique to my State. In the past year several oil spills and one near disaster have occurred in Alaska. In the Pribilof Islands a foreign fishing vessel went aground spilling considerable quantities of oil into the Bering Sea. In Southeastern Alaska the 741-foot ore freighter, *Lee Wang Zin,* tore its hull open and the resulting spill traveled over 100 miles along the Alaska coast. On Janaury 17, 1980, the oil tanker *Prince William Sound* lost power carrying 42 million gallons of oil and drifted with the winds and tide for 16 hours. Only the chance regaining of power averted a major oil spill disaster in one of America's best fisheries.

These and other similar incidents point out the need for a fund to pay for cleanup costs and from which the victims of oil pollution can be compensated and from which fisheries can be rehabilitated if damaged by oil spills. Compensation and rehabilitation must occur regardless of whether or not the spiller is financially solvent or can even be determined. We must not let our national appetite for crude oil put at risk renewable resources upon which we depend for jobs, income and food.

The amendment establishes liability for oil spills and provides that cleanup costs may be paid from the fund. It also provides compensation to fishermen and others affected by oil spills for personal injuries, loss of or damage to property and loss of income. It requires rapid response to claims by spillers and allows recovery from the fund for all damage if the spiller fails to pay claims quickly, or if the spiller is undetermined.

But, cleanup and compensation are not sufficient to adequately protect America's fisheries resources. Therefore, the amendment provides that up to $10 million per year from the fund may be used for research into new methods of preventing oil spills, dealing with spills which have occurred, and assessing both long and short term damages from spills. Hopefully, the results of this research will decrease the likelihood of oil spills and the damage which occurs in the event of a spill.

The most important aspect to this bill from a national viewpoint is the provision of funds for the restoration, rehabilitation and replacement of natural resources damaged or destroyed by an oil spill. All too often fisheries resources are put at risk through oil spills without any person being financially responsible for the rehabilitation or replacement of those resources which are injured or destroyed.

Many times Federal agencies or States having management responsibility for these resources do not have available funds sufficient to rehabilitate and restore the fisheries resources. In such a case the resource is permanently damaged or lost to future generations of fishermen and consumers. Even where public agencies may have funds available for the rehabilitation and restoration of natural resources damaged by oil spills, it is more appropriate for these costs to be charged to the consumers of oil transported through American waters than to the public at large. Thus, the amendment allocates revenues from a minimal tax on oil, in part, to the rehabilitation, restoration and replacement of natural resources damaged or destroyed by an oil spill.

Mr. President, in order to more fully inform my colleagues and the public regarding the details of this amendment I ask unanimous consent that it be printed in the Record and that an additional 50 copies be printed so that it may be widely distributed for comment and suggestions prior to its being offered at such time as S. 1480 should come to the floor of the Senate for consideration. I would encourage my colleagues and others to review this amendment, and I would welcome any suggestions which would help to improve its operation.●

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

**AMENDMENT NO. 1965** Calendar No. **933**

Purpose: To provide a fund for the cleanup of oil spills and the payment of damages to claimants injured by such spill.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

August 5 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. GRAVEL

Viz: At the end of the bill add the following:

### TITLE II

This title may be cited as the "Oil Pollution Liability and Compensation Act of 1980".

### DEFINITIONS

SEC. 2. (a) For the purposes of this title—

(1) the terms "oil", "discharge", "vessel", "public vessel", "United States", "remove" or "removal", "contiguous zone", "onshore facility", "offshore facility", and "barrel" shall have the meaning provided in section 311(a) of the Clean Water Act;

(2) the terms "State", "person", "navigable waters", and "territorial seas" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act;

(3) the term "affiliated" means a relationship between two or more persons in which a person has an ownership interest, whether direct or indirect, in another person or persons, is owned directly or indirectly in whole or in part by or is held directly or indirectly under common control with, another person;

(4) the term "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from a discharge of oil;

(5) the term "claimant" means any person who presents a claim for compensation under this title;

(6) the term "damages" means damages for economic loss or the loss of natural resources as specified in section 3(a)(2) of this title;

(7) the term "Fund" means the Oil Spill Liability Fund established under section 4 of this title;

(8) the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this title or section 311(p) of the Clean Water Act;

(9) the term "natural resources" includes land, fish, wildlife, biota, air, water, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conserva-

tion zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(10) the term "owner or operator" means any person operating a vessel or facility or holding title to, or, in the absence of title, any other indicia of ownership of, a vessel or facility, but does not include a person who (either singly or in combination with others) without participating in the management or operation of a vessel or facility, leases or charters to any other person with whom such person is not otherwise affiliated, or holds such title or indicia of ownership primarily to protect a security interest in, the vessel or facility, and, in the case of any abandoned vessel or facility, the owner or operator of such vessel or facility immediately prior to its abandonment;

(11) the term "refinery" means any facility at which oil is refined.

### LIABILITY FOR DAMAGES AND REMOVAL COSTS

SEC. 3. (a) Except where an owner or operator of a vessel or an onshore or offshore facility can prove that a discharge was caused solely by (i) an act of God, (ii) an act of war, civil war, insurrection, or terrorism, (iii) an act or omission by a person other than the owner or operator, an employee or agent of the owner or operator, or a person acting in a contractual relationship under the direction of the owner or operator, or (iv) an act or omission undertaken at the direction of Federal or State authorities, and notwithstanding liability imposed by any other rule or provision of law, such owner or operator of a vessel or an onshore or offshore facility from which oil is discharged in violation of section 311(b)(3) of the Clean Water Act shall be liable for—

(1)(A) all reasonable costs of removal incurred by the United States Government or a State under subsection (c), (d), (e), (b)(2)(B)(v), or (f)(4) of section 311 of the Clean Water Act or under the Intervention on the High Seas Act or section 18 of the Deepwater Port Act of 1974, and

(B) any other reasonable costs or expenses incurred by any person to remove oil as the terms "remove" or "removal" are defined in section 311(a)(8) of the Clean Water Act; and

(2) all damages resulting from such a discharge including, but not limited to:

(A) any personal injury;

(B) any injury to or destruction of any real or personal property;

(C) any loss of use of real or personal property;

(D) any injury to or destruction of natural resources, not limited to amounts which can be used to restore or replace such resources, including the reasonable costs of assessing such injury or destruction;

(E) any loss of use of any natural resources;

(F) any loss of income or profits or impairment of earning capacity resulting from injury to or destruction of real or personal property or natural resources; and,

(G) any direct or indirect loss of tax, royalty, rental, or net profits share revenue by the Federal Government or any State or political subdivision thereof.

(3) for purposes of this section a discharge of oil into or upon the territorial sea, international waters, or adjacent shoreline of a foreign nation shall be deemed a discharge in violation of section 311(b)(3) of the Clean Water Act.

(b) Claims authorized under subsection (a) may be asserted—

(1) under paragraph (1), by any claimant: *Provided,* That the owner or operator of a vessel or facility from which a discharge occurs may assert such a claim only if such owner or operator is entitled to a

defense to liability under subsection 3(a) or such owner or operator incurs liability in excess of the limits set forth in subsection 3(d);

(2) under subparagraph (A) of paragraph (2) any claimant suffering personal injury;

(3) under subparagraph (B), (C), and (E) of paragraph (2) by any claimant if the property destroyed or injured is owned or leased by the claimant, or the property or natural resource the use of which is lost is utilized by the claimant;

(4) under subparagraph (D) of paragraph (2), by the President as trustee for natural resources over which the United States has sovereign rights or exercises exclusive management authority, and by any State for natural resources within or adjacent to such State and owned, managed, or controlled by such State;

(5) under subparagraph (F) of paragraph (2), by any claimant deriving earnings from activities which utilize the property or natural resources;

(6) under subparagraph (G) of paragraph (2) by the United States and any State or political subdivision thereof;

(7) by a claimant residing in a foreign country, or the government of a foreign country or any agency or political subdivision thereof if—

(A) the claimant is not otherwise compensated for his loss;

(B) the oil was discharged from—

(i) a facility located in the United States or subject to the jurisdiction of the United States;

(ii) a vessel into the navigable waters of the United States; or,

(iii) a vessel carrying oil as cargo between two ports subject to the jurisdiction of the United States; and,

(C) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants: *Provided, however,* That condition (C) shall not apply where the claim is asserted by a resident of Canada and where the oil pollution involves oil that has been transported through the pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act, as amended, has been loaded on a ship for transportation to a port in the United States, and is discharged from the ship prior to being brought ashore in that port.

(c) This section shall in no way affect or reduce the rights of subrogation which (1) the owner or operator of a vessel or facility, (2) the United States, (3) any State, or (4) any person may have against any person whose acts may have caused or contributed to a discharge.

(d)(1) The liability of an owner or operator of a vessel or an onshore or offshore facility for damages and removal costs under this section, and inclusive of the limits of liability established under section 311(f) of the Clean Water Act, for each discharge or incident shall not exceed—

(A) $300 per gross ton or $500,000, whichever is greater, of any vessel carrying oil in bulk or in commercial quantities as cargo;

(B) $300 per gross ton of any other vessel;

(C) the total of all costs of removal under subsection (a)(1) of this section plus $50,000,000 for any offshore facility operated under the authority of or subject to the Outer Continental Shelf Lands Act;

(D) $50,000,000 for any deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the licensee for a discharge from any vessel moored at such port, in any case where $50,000,000 exceeds $300 per gross ton of such vessel); or

(E) $50,000,000 for any other onshore or offshore facility.

(2) Notwithstanding the limitations of paragraph (1) of this subsection, the liability of the owner or operator of a vessel of an onshore or offshore facility under subsection (a) of this section shall be the full and total damages and removal costs but not including any removal costs incurred on behalf of such owner or operator, if (A) the discharge of oil was the result of willful misconduct or negligence within the privity and knowledge of the owner or operator or of a violation (within the privity and knowledge of the owner or operator) of applicable safety, construction, or operating standards or regulations; or (B) the owner or operator fails or refuses to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities under the contingency plan established under section 311(c) of the Clean Water Act.

(3) Notwithstanding the limitations of paragraph (1) of this subsection or the exceptions or defenses of subsection (a) of this section, all reasonable costs of removal incurred by the United States Government or any State or local official or agency in connection with a discharge of oil from any off-

shore facility operated under the authority of or subject to the Outer Continental Shelf Lands Act or a vessel carrying oil as cargo from such a facility shall be borne by the owners and operator of the offshore facility or vessel from which the discharge occurred.

(e) The President may establish by regulation, with respect to any class or category of onshore or offshore facility subject to subsection (d)(1)(E) of this section, a maximum limit of liability under this section of less than $50,000,000.

(f) The owner or operator of a vessel shall be liable in accordance with this section and section 311 of the Clean Water Act and as provided under section 27 of this title notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff).

### OIL SPILL LIABILITY FUND

SEC. 4. (a) There is hereby established in the Treasury of the United States the Oil Spill Liability Fund. The Fund shall be administered by the Secretary of the Treasury, as specified in this section. The Fund may sue and be sued in its own name.

(b) The Fund shall be constituted from—

(1) all taxes collected pursuant to subsection (c);

(2) all moneys recovered on behalf of the Fund under section 5;

(3) all moneys recovered or collected on behalf of the Fund under this title, including the interest on the investment of Fund assets; and

(4) any penalties imposed under section 311 of the Federal Water Pollution Control Act (insofar as it relates to oil).

(c) MANAGEMENT OF THE FUND.—The Secretary of the Treasury shall—

(1) transfer at least monthly from the general fund of the Treasury to the Fund the amounts appropriated by subsection (b) on the basis of his estimate of such amounts and make adjustments in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred;

(2) make payments from the Fund as authorized by this title, appropriations Acts, and the Fund Administrator; and

(3) invest such portion of the Fund as is not required to meet current withdrawals in public debt securities with maturities suitable for the needs of the Fund and bearing interest at rates determined by the Secretary.

(d) The Internal Revenue Code of 1954 is amended by adding the following new sections:

**"SEC. 4611. IMPOSITION OF TAX.**

"(a) GENERAL RULE.—There is hereby imposed a tax of 0.8 cent a barrel on—

"(1) crude oil received at a United States refinery, and

"(2) petroleum products entered into the United States for consumption, use, or warehousing.

"(b) SURTAX AND REMISSION.—If on September 30 of any year, the Secretary of the Treasury determines that—

"(1) the balance of the Fund is $150,000,000 or less then beginning with the receipt of oil on January 1 of the following year the rate of tax shall increase to 1.6 cents per barrel until the end of the fiscal year of the United States during which such January 1 falls; or

"(2) the balance of the Fund is $200,000,000 or more then beginning with the receipt of oil on January 1 of the following year the rate of tax shall be reduced to zero until the end of the fiscal year of the United States during which such January 1 falls;

"(3) in order to retire within the next succeeding fiscal year obligations of the Fund purchased by the Secretary of the Treasury a tax in excess of that imposed by subparagraph (1) is required, a surtax, not to exceed 1.4 cents per barrel, shall be imposed in an amount determined by the Secretary of the Treasury to be sufficient to retire the debt of the Fund, beginning with receipt of oil on January 1 of the following year until the end of the fiscal year of the United States during which such January 1 falls.

"(c) TAX ON CERTAIN USES AND EXPORTATION.—

"(1) IN GENERAL.—If—

"(A) any domestic crude oil is used in or exported from the United States, and

"(B) before such use or exportation, no tax was imposed on such crude oil under subsections (a) and (b), then such oil shall, at the time of such use or exportation be deemed crude oil received at a United States refinery.

"(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply to crude oil used for extracting oil or natural gas on the premises where such crude oil was produced.

"(d) PERSONS LIABLE FOR TAX.—

"(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsections (a)(1) and (b) shall be paid by the operator of the United States refinery.

"(2) IMPORTED PETROLEUM PRODUCTS.—The tax imposed by subsections (a)(2) and (b) shall be paid by the person entering the product for consumption, use, or warehousing.

"(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (c) shall be paid by the person using or exporting the crude oil, as the case may be.

**"SEC. 4612. DEFINITIONS AND SPECIAL RULES.**

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(2) DOMESTIC CRUDE OIL.—The term 'domestic crude oil' means any crude oil produced from a well located in the United States.

"(3) PETROLEUM PRODUCTS.—The term 'petroleum product' includes crude oil.

"(4) UNITED STATES.—

"(A) IN GENERAL.—The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(B) UNITED STATES INCLUDES CONTINENTAL SHELF AREAS.—The principles of section 638 shall apply for purposes of the term "United States".

"(C) UNITED STATES INCLUDES FOREIGN TRADE ZONES.—The term "United States" includes any foreign trade zone of the United States.

"(5) UNITED STATES REFINERY.—The term "United States refinery" means any facility in the United States at which crude oil is refined.

"(6) REFINERIES WHICH PRODUCE NATURAL GASOLINE.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

"(7) PREMISES.—The term "premises" has the same meaning as when used for purposes of determining gross income from the property under section 613.

"(8) BARREL.—The term "barrel" means 42 United States gallons.

"(9) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4611 shall be the same fraction of the amount of such tax imposed on a whole barrel.

"(b) ONLY 1 TAX IMPOSED WITH RESPECT TO ANY PRODUCT.—No tax shall be imposed by section 4611 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax has been imposed by such section with respect to such product.".

(e) If at any time the moneys in the Fund are insufficient to meet the obligations of the Fund the Secretary of the Treasury may purchase from the Fund notes or other obligations in the forms and denominations, bearing the interest rates and maturities and subject to the terms and conditions as may be prescribed by the Secretary of the Treasury in amounts not in excess of that which the Secretary of the Treasury determines can reasonably be repaid from amounts received under paragraph (d) of this section and—

(1) the Secretary of the Treasury is authorized, for the purchase of notes or other obligations issued under this subsection, to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, and the proceeds for which securities may be issued under that Act are extended to include any purchase of these notes or obligations;

(2) the Secretary of the Treasury may at any time sell or otherwise dispose of any notes or other obligations acquired under this subsection and all redemptions, purchases, and sales by the Secretary of the Treasury of these notes or other obligations shall be deemed public debt transactions of the United States;

(3) nothing in this subsection or this title shall be construed to create any entitlement in any claimant nor any obligation in the fund to borrow or the Secretary of the Treasury to lend any funds from the general fund of the Treasury for any payment authorized or required by this title.

### USE OF THE LIABILITY FUND

SEC. 5. (a) The Fund administrator shall authorize payment of money from the Fund for the following purposes:

(1) payment of any claim for damages provided under section 3;

(2) payment of all reasonable removal costs or expenses and other reasonable costs of carrying out the national contingency plan established under section 311(c) of the Clean Water Act, including reasonable removal costs incurred by any person and approved under such national contingency plan;

(3) subject to such amounts as are provided by appropriation, payment of the reasonable cost of assessing both short- and long-term injury to, destruction of, any publicly owned or controlled natural resources resulting from a discharge of oil: *Provided, however,* That amounts not in excess of $1,000,000 per year shall be available from the Fund for emergency assessment of injury to, destruction or loss of any publicly

owned or controlled natural resources resulting from a discharge of oil;

(4) payment of the costs of reasonable expenditures of Federal or State Governments for the restoration, rehabilitation, and replacement of publicly owned or controlled natural resources injured or destroyed as a result of any discharge of oil or the acquiring of equivalent natural resources;

(5) reimbursement to any State for the payment of any claims for costs of removal or damages payable under this Act which such State has paid with funds under the control of such State pursuant to the national contingency plan and a contract under subsection (b) of this section;

(6) subject to such amounts as are provided by appropriation not to exceed $10,000,000 per fiscal year, the costs of research related to the purposes of this title and section 311 of the Clean Water Act, to be performed by Federal agencies including the Environmental Protection Agency, the Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration. Such research shall include, but not be limited to (A) development and refinement of protocols to determine the type and extent of short and long term injury or destruction of natural resources, (B) de-

velopment and refinement of the best available procedures to identify the value of injured or destroyed resources, (C) laboratory or field research on the effects of oil on living and nonliving resources that will provide additional scientific basis for damage assessments, and (D) research on minimizing the damage caused by spill control, dispersal and removal operations. Responsibility under the preceding sentence shall be assigned in accordance with the assessment responsibilities established under subsection (h)(2) of this section and officials responsible for such assessments shall be consulted before proposal of any research plan or appropriation request under the preceding sentence; and

(7) subject to such amounts as are provided by appropriation, the reasonable administrative and personnel costs of administering the Fund and this title.

(b) The President shall designate a Fund Administrator who shall have authority to obligate money in the Fund, to administer the Fund in accordance with the provisions of this title, and to promulgate reasonable regulations for the presentation, filing, settlement, and adjudication of claims compensable under this title. The Fund Administrator may delegate his authority to obligate money in the Fund or to settle claims to one or more Federal officials and to officials of a

State with an adequate program operating under a contract with the Federal Government.

(c) The owner and operator of any vessel or facility from which oil has been discharged shall provide reasonable public notice of the rights of potential injured parties and if the source of the discharge is a public vessel, a matter of dispute, or undetermined, the Fund Administrator shall provide reasonable public notice of the procedures by which claims may be presented to the Fund.

(d) Any person with a claim authorized by section 3 (a) and (b) shall present such claim to the owner or operator of the vessel, or onshore or offshore facility from which oil has been discharged if such owner or operator can be determined and, if when such claim has not been satisfied within ten days the claimant may commence an action against such owner or operator or present the claim to the Fund for payment in accordance with the reasonable rules and procedures established by the Fund Administrator.

(1) Claims less than $10,000 presented to the Fund shall be determined and paid within ninety days of the date the claim was first made.

(2) No claim may be presented nor may an action be commenced for damages under this title unless that claim is presented or action commenced by the earlier

of a date three years from the date of discovery of the loss or ten years from the date of the discharge.

(3) The Fund shall not pay any claim for costs of removal or damages to the extent that the discharge was caused by the negligence or misconduct of the claimant or to the extent that the claimant failed to take reasonable steps, under the facts and circumstances, to mitigate the damages caused the claimant by such discharge.

(e)(1) Except as provided in subparagraph (2), the Fund Administrator shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5) upon a determination by the Fund Administrator that advertising is not reasonably practicable. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the Fund Administrator.

(ii) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Fund Administrator may use Federal personnel to process claims against the fund.

(iii) Without regard to subsection (b) of section 556 of title 5, United States Code, the Fund Administrator is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes regarding certifications, denials, or benefits which are filed by claimants. Panel members may be appointed from the private sector or from any Federal agency except the staff administering the Fund. Each panel member appointed from the private sector shall receive a per diem compensation, and each panel member shall receive necessary travel and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, apply to panel members appointed from the private sector.

(f)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation all rights of the claimant to recover the costs of removal or damages from the person responsible for such discharge.

(2) Any person, including the Fund, who pays compensation pursuant to this title to any claimant for damages or costs of removal resulting from a discharge of oil shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal such claimant has under this title of any other law.

(g) The Fund Administrator shall bring an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this title subject to the limitations on liability provided in section 3(c) and in addition thereto all reasonable costs incurred by the Fund by reason of the claim, including interest, administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any owner, operator or other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs of removal for which the compensation was paid.

(1) In addition to defenses otherwise available the owner or operator against whom an action is brought may raise as a defense the reasonableness of claims paid for cleanup costs and the amount of damages paid by the Fund to any claimant.

(2) If, in an action to recover amounts paid by the Fund, a final determination is made that any claimant was paid amounts $10,000 or more in excess of rea-

sonable cleanup costs or actual damages the Fund Administrator shall commence an action on behalf of the Fund to recover such excess costs or damages.

(h)(1)(A) The President, acting through the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Environmental Protection Agency, and the Director of the Fish and Wildlife Service, not later than two years after the enactment of this title, shall promulgate reasonable regulations for the assessment of damages for injury to or destruction of natural resources resulting from a discharge of oil, for the purpose of section 3(a)(2) (D) and (E) of this Act, section 5(a)(6) of this Act, and section 311(f) (4) and (5) of the Clean Water Act.

(B) Such regulations shall specify (i) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of affected area, and (ii) alternative protocols for conducting assessments in individual cases to determine the type and extent of short and long term injury or destruction. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(2) In accordance with such regulations, damages for, injury to, or destruction of natural resources resulting from a discharge of oil, for the purposes of section 3(a)(2) (D) and (E) and section 5(a)(1) of this title and section 311(f)(4) and (5) of the Clean Water Act, shall be assessed by (A) the Director of the Fish and Wildlife Service for living natural resources and their supporting ecosystems over which such Service has management or conservation authority, (B) the Administrator of the National Oceanic and Atmospheric Administration for other natural resources in the marine environment beyond the baseline of the territorial sea, and (C) the Administrator of the Environmental Protection Agency for all natural resources. Such officials shall act for the President as trustee under section 3(b) of this title and section 311(f)(5) of the Clean Water Act.

(i) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this title for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by, or appertaining to such State after adequate public notice and opportunity for hearing and consideration of all public comment.

(j) The Comptroller General shall audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered and shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund and shall thereafter provide such auditing of the Fund as is appropriate.

### FINANCIAL RESPONSIBILITY

SEC. 6. (a)(1) The owner or operator of any vessel over three hundred gross tons (except a non-self-propelled barge that does not carry oil as cargo or fuel) using any port or place in the United States or the navigable waters or any offshore facility shall establish and maintain in accordance with section 311(p) of the Clean Water Act evidence of financial responsibility sufficient to meet the liability to which the owner or operator of such vessel could be subject under section 3(d)(1) of this Act. The provisions of paragraphs (3), (4), (5), and (6) of such section 311(p) shall apply to any vessel, or the owner or operator thereof, subject to this section. This section shall take effect May 1, 1981.

(2) Any vessel subject to the requirements of this subsection which is found in the navigable waters without the necessary evidence of financial responsibility shall be subject to seizure by the United States of any oil carried as cargo.

(b)(1) The owner or operator of any offshore facility shall establish and maintain evidence of financial responsibility sufficient to meet the liability to which the owner or operator of such facility could be subject under section 3(d)(1) of this Act or $50,000,000 whichever is less. Such evidence of financial responsibility shall be established according to regulations prescribed by the President and comparable to that required under section 311(p) of the Clean Water Act.

(2) The owner or operator of any offshore facility subject to this subsection who fails to comply with this section or the regulations prescribed thereunder shall be subject to a fine of not more than $10,000 per day of violation.

### STATE LAWS AND PROGRAMS

SEC. 7. (a) States are hereby precluded from—

(1) the imposition of excise taxes or fees upon oil for purposes of financing activities related to the cleanup of discharges and the payment of damages caused by discharges, and

(2) the imposition of liability for discharges in excess of the limits provided under this title.

(b) Any person who receives compensation for removal costs or damages pursuant to this title shall be precluded from recovering compensation for the same removal costs or damages pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages as provided in this title.

### CONFORMING AMENDMENTS

SEC. 8. (a) Review of any regulation promulgated under this title may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia.

(b) Except as provided in subsection (a) of this section, the United States district court shall have exclusive original jurisdiction over all controversies arising under this title without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the discharge or release or damages occurred, or in which the defendant resides, may be found, or does business.

(c) No provision of this title shall be deemed or held to moot any litigation concerning any discharge or any damages associated therewith, commenced prior to enactment of this title.

(b) TRANS-ALASKA PIPELINE AUTHORIZATION ACT.—(1) Section 204(b) of the Trans-Alaska Pipeline Authorization Act (87 Stat. 586) is amended, in the first sentence—

(A) by inserting after the words "any area" the words "in the State of Alaska,"

(B) by inserting after the words "any activities" the words "related to the Trans-Alaska Oil Pipeline," and

(C) by inserting at the end of the subsection the following new sentence: "This subsection shall not apply to removal costs covered by the Oil Spill Liability Fund and Compensation Act of 1980.".

(2)(A) Section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) is hereby repealed. The Trans-Alaska Pipeline Liability Fund is hereby abolished. All assets of that fund, as of the effective date of this section, shall be transferred to the Oil Spill Liability Fund established by section 4 of this Act. The Oil Spill Liability Fund shall assume any and all liability incurred by the Trans-Alaska Pipeline Liability Fund under the terms of section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)), and shall assume all liability incurred by the officers or trustees in the execution of their duties involving the Trans-Alaska Pipeline Liability Fund other than the liability of those officers or trustees for gross negligence or willful misconduct.

(B) The Secretary of the Interior shall certify to the Secretary of the Treasury the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund at the time the transfer of assets required under paragraph (A) is made. If the Secretary finds that—

(i) the total amount of the assets so transferred is greater than the total amount of the outstanding claims so certified, subject to subparagraph (D) of this paragraph the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified shall constitute an advance payment toward payment of the tax due under section 4(d) of this title on barrels of oil, and the Secretary of the Treasury shall waive such tax until such time as the total amount of tax so waived equals the difference the between the amount the assets so transferred and the amount of the outstanding claims so certified: *Provided,* That should the tax due under section 4(d) of this title be no longer required whereby the assets transferred and remaining can no longer be used as an advance payment at the end of the second year of the Fund then the difference between the amount of the assets so transferred and the amount of the outstanding claims so certified shall be rebated by the Secretary directly to the operator of the Trans-Alaska Oil Pipeline for payment, on a pro rata basis to the owners of the oil at the time it was loaded on the vessel; or

(ii) the total amount of the assets so transferred is less than the total amount of the outstanding claims so certified, the Secretary of the Treasury shall increase by 2 cents per barrel the tax imposed under section 4 on barrels of oil until such time as the total amount of the 2-cent-per-barrel increase so collected equals the difference between the amount of the certified outstanding claims and the amount of the transferred assets.

(C) In the event that the total amount of the actual claims settled is less than the total amount of the outstanding claims certified, the difference between these amounts shall be rebated by the Secretary of the Treasury directly to the operator of the Trans-Alaska Oil Pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(D) If an owner of oil (as that term is used in section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act who prior to enactment of this title paid fees to the operator of the pipeline for transfer to the Trans-Alaska Pipeline Liability Fund receives the benefit of an advance payment under subparagraph (B)(i) of this paragraph for the collection or payment of tax established under section 4(d) of this title, such owner of oil shall compute, based upon accepted accounting procedures, what the oil production tax and what the royalty paid to the State of Alaska would have been had payments not been made to the Trans-Alaska Pipeline Liability Fund in the amount of tax waived. The difference between the amounts so computed and amounts actually paid to the State of Alaska shall be paid by each such owner to the State of Alaska. Such owner shall make such payment to the State of Alaska during such time the collection of payment of tax under section 4(d) of this title is waived.

(E) For purposes of paragraph (B), the term "barrels of oil" means only barrels of oil which would, but for the repeal made by this paragraph, be subject to the fee imposed under section 204(c)(5) of the Trans-Alaska Pipeline Authorization Act. The term "Secretary" means the Secretary of the Treasury.

(b) INTERVENTION OF THE HIGH SEAS ACT.—Section 17 of the Intervention on the High Seas Act (88 Stat. 10) is amended to read as follows:

"SEC. 17. The Fund established under section 4 of the Oil Pollution Liability and Compensation Act of 1980 shall be available to the Secretary for actions taken under section 5 of this Act.".

(c) CLEAN WATER ACT.—Section 311 of the Clean Water Act is amended as follows:

(1) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under section 4 of the Oil Pollution Liability and Compensation Act of 1980, as appropriate,".

(2) Subsection (f) is amended, in the last sentence of paragraph (1), by inserting a comma after the word "vessel" and by adding immediately thereafter "or against any guarantor of an owner's or operator's liability under the Oil Pollution Liability and Compensation Act of 1980,".

(3) Subsection (g) is amended, by inserting in the last sentence, after the word "party" the words "or against any guarantor of an owner's or operator's liability under the Oil Pollution Liability and Compensation Act of 1980."

(4) One-half of any sums available and uncommitted on the effective date of the Oil Pollution Liability and Compensation Act of 1980 in the Fund established under subsection (k) of section 311 of the Clean Water Act shall be transferred to the Fund established under section 4 of the Oil Pollution Liability and Compensation Act of 1980.

(d) DEEPWATER PORT ACT.—The Deepwater Port Act of 1974 (88 Stat. 2126) is amended as follows:

(1) In section 4(c)(1) strike "section 18(l) of this Act," and insert in lieu thereof "section 26 of the Oil Pollution Liability and Compensation Act of 1980,".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), (n) and clause (1) of subsection (m) of section 18 are deleted.

(3) Clause (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section," and inserting in lieu thereof: "fund established under section 4 of the Oil Pollution Liability and Compensation Act of 1980."

(4) Subsection (c), (k), and (m) of section 18 are redesignated (b), (c), and (d) respectively, and clauses (2), (3), and (4) of subsection (m) are redesignated (1), (2), (3), respectively.

(e) OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS.—Title III of the Outer Continental Shelf Lands Act Amendments of 1978 is hereby repealed.

(f) Any expenditure under section 5(a) of this title, other than those (1) under the authority of section 311(c) of the Clean Water Act involving the balance of the contingency fund established under section 311(p) of Act and transferred to the Fund under section 28(a)(2) of this title, shall be made after October 1, 1978, for any claim arising before such date and after the date of enactment of this title.

(g) EFFECTIVE DATE.—The provisions of this title shall be effective with respect to discharges which occur after December 23, 1979.

III

AMENDMENT NO. **2292** Calendar No. **933**

Purpose: To clarify that natural gas, LNG, and high-BTU synthetic gas are not hazardous substances under S. 1480.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency reponse for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 9 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. RANDOLPH

Viz:

On page 8, line 23, strike the semicolon and insert in lieu thereof a period and the following: "The term does not include natural gas, liquefied natural gas, or high-BTU synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas);".

III

AMENDMENT NO. **2293** Calendar No. **933**

Purpose: To clarify the liability of common or contract carriers after a shipment has been delivered for releases due to circumstances beyond the control of the common or contract carrier.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

# S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 9 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. RANDOLPH (for himself, Mr. CULVER, and Mr. STAFFORD)

Viz:

On page 9, lines 14 through 23, amend section 2(b)(15)(B) by redesignating that section as section 2(b)(15)(B)(1) and adding the following new paragraph:

"(2) in the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility (i) the term 'owner or operator' shall mean such disposal or treatment facility, and (ii) such common or contract carrier shall not be considered to have caused or contributed to any discharge or release at such disposal or treatment facility resulting from circumstances or conditions beyond its control.".

III

AMENDMENT NO. 2294 Calendar No. 933

Purpose: To conform the standard of financial responsibility for motor carriers carrying hazardous substances to that in the Motor Carrier Act of 1980.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 9 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. RANDOLPH (for himself, Mr. CULVER, and Mr. STAFFORD)

Viz: On page 85, after line 11, insert a new subsection as follows:

(c) The minimum requirements for evidence of financial responsibility for motor carriers covered by this Act shall be determined under section 30 of the Motor Carrier Act of 1980, Public Law 96-296.

AMENDMENT NO. **2295** Calendar No. **933**

Purpose: To avoid duplicative and unnecessary regulation of transportation of hazardous substances and to make clear that the primary jurisdiction over transportation matters remains with the Department of Transportation.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 9 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. RANDOLPH (for himself, Mr. CULVER, and Mr. STAFFORD)

Viz: On page 91, after line 21, add the following new section:

### COORDINATION

SEC. 13. The Administrator of the Environmental Protection Agency and the Secretary of Transportation shall work together to assure maximum coordination, uniformity, minimize paperwork, and eliminate duplicative or overlapping rules and regulations under this and other Federal statutes. Except as otherwise expressly provided in such other statutes, any regulations affecting transportation of hazardous substances shall be promulgated by the Secretary of Transportation after consultation with the Administrator of the Environmental Protection Agency.

III

AMENDMENT NO. **2296** Calendar No. **933**

Purpose: To establish the existing National Response Center as the central reporting and notification body.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 9 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. RANDOLPH (for himself, Mr. CULVER, and Mr. STAFFORD)

Viz:

On page 15, lines 6 through 8, strike "immediately notify the appropriate agency of the United States Government of such discharge, release, or disposal." and insert in lieu thereof the following: "immediately notify the National Response Center established under the Clean Water Act of such discharge, release, or disposal. The National Response Center shall be jointly administered by the Department of Transportation and the Environmental Protection Agency. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies.".

AMENDMENT NO. 2297 Calendar No. 933

Purpose: To clarify that facilities at which hazardous substances are stored do not include motor vehicles, rolling stock, or aircraft.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 9 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. RANDOLPH (for himself, Mr. CULVER, and Mr. STAFFORD)

Viz:

On page 13, line 22, insert the following new paragraph:

"(19) the term 'facility' as used in the phrase 'facility or site at which hazardous substances are stored or disposed of', or any similar phrase, shall not include any motor vehicle, rolling stock, or aircraft.".

III

AMENDMENT NO. 2298 Calendar No. 933

Purpose: To clarify that S. 1480 does not cover releases of oil.

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 9 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. RANDOLPH (for himself, Mr. CULVER, and Mr. STAFFORD)

Viz:

On page 13, after line 22, insert the following new paragraph:

"(20) for the purposes of section 3(c)(1) of this Act, the term 'pollutant or contaminant' does not include oil.".

III

AMENDMENT NO. **2299** Calendar No. **933**

Purpose: To provide that ordinary stoppage in the transportation process would not constitute storage.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 9 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. RANDOLPH (for himself, Mr. CULVER and Mr. STAFFORD)

Viz:

On page 12, line 2, strike the "and" immediately following "1974"; and on page 12, after line 2, insert the following new paragraph and redesignate succeeding paragraphs accordingly:

"(18) in the case of a hazardous substance which has been accepted for transportation by a common or contract motor carrier, the term 'transportation' shall include any stoppage in transit which is temporary, incidental to the transportation movement, or at the ordinary operating convenience of a common or contract motor carrier, and shall be considered as a continuity of movement and not as the storage of a hazardous substance; and".

III

AMENDMENT NO. **2300** Calendar No. **933**

Purpose: To avoid duplication in information requirements for transportation.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 9 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. RANDOLPH (for himself, Mr. CULVER, and Mr. STAFFORD)

Viz:

On page 23, line 20, strike "transportation,".

III

AMENDMENT NO. **2301** Calendar No. **933**

Purpose: To clarify that the notice and penalty provisions of S. 1480 do not apply to pesticide applications.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 9 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. RANDOLPH (for himself, Mr. CULVER, and Mr. STAFFORD)

Viz:

On page 16, after line 17, insert the following new subparagraph:

"(D) This paragraph shall not apply to the field application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act.".

[From the Congressional Record, Sept. 10, 1980, pp. S12382-S12383]

# ENVIRONMENTAL EMERGENCY RESPONSE ACT—S. 1480

## AMENDMENTS NO. 2315 THROUGH 2320

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted six amendments intended to be proposed by him to S. 1480, a bill to provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Mr. HELMS. Mr. President, I have carefully examined the so-called superfund legislation, S. 1480. As I have stated on the floor of the Senate previously what I have discovered disturbs me. I share the sentiments of the distinguished Senator from Wyoming (Mr. Simpson) as expressed in the Senate committee report's minority views:

> It does alarm me to see the tendency, with but a sweep of the drafter's pen, to simply brush off on the floor many of the rules of evidence which have been so closely crafted and observed in our procedural life as lawyers.

But sweeping change in our rules of evidence is just the "tip of the iceberg." With the creation of a "Federal toxic tort," we are preempting the common law tort system of each of our 50 States—something we should not do without long, serious consideration. With the number of alternatives for dealing with our problems of hazardous wastes, it is unwise indeed to enact such sweeping and monumental legislation.

Mr. President, I have specific concerns with this legislation. It is for that reason that I am today submitting several amendments in the hope that they will serve to begin a serious dialog on these issues.

Mr. President, I ask unanimous consent that the text of each of my amendments be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

### AMENDMENT NO. 2315

Mr. HELMS. Mr. President, the purpose of my first amendment is to delete the designation as "ultrahazardous activities," the manufacture, use, transportation, treatment, storage, disposal, and release of hazardous substances. This term is not defined in the act, in fact, it is never explained or mentioned further therein. However, the term "ultrahazardous activity" is a legal term, that is, one with legal implications which have the effect of expanding the already extraordinary standard of care required for dealing in such activities relating to hazardous substances.

For example, the restatement of torts has defined an "ultrahazardous activity" as one which "necessarily involves a risk of serious harm to the person, lands, or chattels of theirs which cannot be eliminated by the exercise of utmost care" and is not a matter of common usage. To say that the use of a hazardous substance—as overbroadly defined in this bill—is ultrahazardous, certainly would constitute a dangerous extension of the law—especially when common table salt could qualify as a hazardous substance under the terms of the bill. Mr. President, my amendment would remove the designation from the act, thereby closing the "can of worms" opened by its inclusion.

III

AMENDMENT NO. 2315 Calendar No. 933

Purpose: To delete the designation of the manufacture, use, transportation, treatment, storage, disposal, and release of hazardous substances as "ultrahazardous activities".

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 10 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. HELMS

Viz:

On page 13, strike out lines 22 through 25.

On page 14, line 1, strike out "(2)" and insert in lieu thereof "SEC. 3. (a)(1)".

On page 14, line 21, strike out "(3)" and insert in lieu thereof "(2)".

On page 15, line 16, strike out "(4)" and insert in lieu thereof "(3)".

## AMENDMENT NO. 2316 [Sec. 103(c)]

Mr. HELMS. Mr. President, this amendment would strike the words "reason to believe" from the site notification section in the bill. This section of the bill mandates that—

> Any person who owns or operates, or has reason to believe that he or she may be subject to liability for, a facility or site at which hazardous substances . . . are stored or disposed of which is not in compliance with a permit . . . shall notify the Administrator of EPA of the existence of such facility or site.

As presently written, the duty which arises applies to all persons with any connection to the disposal site—even a person who may have a future connection. A person who may "have reason to believe" he is subject to this requirement would be responsible for guessing as to potential liability prior to the filing of any claim—even in some cases prior to any event which would lead to a claim—all in order to determine whether he must comply with this notice section. And the penalties for failure to give notice under this vague and indefinite section are harsh—a fine, prison sentence, and a waiver of any other limitations of liability, not only found in this act, but in any other laws. Mr. President, to impose such a penalty for failure to act, the required action should be clearly spelled out. The inclusion of the phrase "reason to believe" in this section leads to such ambiguity that some experts have even indicated it would violate the due process requirement that a criminal statute not be so indefinite as to fail to give fair notice that a contemplated act is forbidden by statute. Under such circumstances, it appears wise to remove this offending language.

III

AMENDMENT NO. **2316** Calendar No. **933**

Purpose: To eliminate the vague "reason to believe" standard for site or facility notification.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 10 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HELMS

Viz:

On page 16, lines 17 and 18, strike out ", or has reason to believe that he or she may be subject to liability for,".

### AMENDMENT NO. 2317 [Sec. 107(b)]

Mr. HELMS. Mr. President, my amendment would add—as defenses to the liability for damages as a result of a discharge, release, or disposal—the defenses of negligence on the part of the U.S. Government, and an act or omission of a third party, or a combination of the listed defenses. Along with the already present defense of an act of God or act of war, these additions would bring the Act into conformity with section 311 of the Clean Water Act and would bring an element of fundamental fairness to it.

My able colleagues, Senators Domenici, Bentsen, and Baker, in the Senate report to S. 1480, have very clearly outlined the results of the bill's omission of these defenses:

> The only available defenses under the bill are an Act of God or an Act of War. As a consequence, what S. 1480 does is to simply throw out negligence and nuisance as legal concepts relating to the ongoing activities of America's entire industrial base.
>
> The effects of such a doctrine are clear. For example, in the case of a mining operation where certain chemicals are used in the extraction process, the owner or operator of that mine would have no defense available to him if an unidentified third party unconnected with his operation, came onto the mine site and mishandled those chemicals. He would find himself facing a barrage of suits in which he was being held strictly liable for all of the damages regardless of whether or not he had any control over the situation.

Mr. President, adequate precedent is present both in tort and Federal statutory law for the addition of these defenses. Under the circumstances, common fairness dictates their inclusion.

III

AMENDMENT NO. **2317** Calendar No. **933**

Purpose: To include the full range of defenses found in section 311 of the Clean Water Act.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 10 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HELMS

Viz:

On page 24, lines 19 and 20, strike out "~~(i)~~ an act of God or ~~(ii)~~ an act of war" and insert in lieu thereof "(I) an act of God, (II) an act of war, (III) negligence on the part of the United States Government, or (IV) an act or omission of a third party without regard to whether any such Act or omission was or was not negligent, or any combination of clauses (I) through (IV)".

### AMENDMENT NO. 2318 [Sec. 107]

Mr. HELMS. Mr. President, this amendment would substitute apportioned liability for the joint and several liability requirements presently in the bill. This strict, joint and several liability would extend to the largest number of possible defendants for a broad category of damages. Under this plan, a person with only a peripheral connection to an incident could be held liable for this entire damage because the bill extends liability to four categories of persons: First, present owners or operators of the vessel or facility from which the release occurred; second, owners or operators at the time of the release; third, generators who arrange for offsite disposal; and fourth, transporters. It is patently unfair to require strict as well as joint and several liability on all these classes of persons. My amendment would merely allow for apportionment of the damages so as to equitably assess the party at fault for the damage and injury he has caused.

Now, I understand there is an apportionment provision in the committee-drafted bill. However, it is clearly inadequate. It would allow defendants who are not "significant" contributors to the discharge to prove apportionment. But this proof could only be made after the establishment of the liability and all payments are made. This proof likely will be impossible because of the act's failure to define the key term—"significant." At any rate, any "significant" contributor is not assisted in the bill by apportionment, but is bound by the strict, joint and several liability scheme. My amendment would clearly establish the right of all defendants to apportionment of damages—regardless of the significance of their contribution to the injury.

III

AMENDMENT NO. 2318 Calendar No. 933

Purpose: To substitute apportioned liability for joint and several liability.

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 10 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. HELMS

Viz:

On page 25, lines 22 and 23, strike out "shall be jointly, severally, and strictly liable for" and insert in lieu thereof "shall be strictly liable for such person's apportioned share (as determined by the trier of fact) of".

On page 29, line 3, strike out "liable for" and insert in lieu thereof "liable for such person's apportioned share (as determined by the trier of fact) of".

Beginning on page 31, line 14, strike out all through page 33, line 6.

On page 33, line 7, strike out "(g)" and insert in lieu thereof "(f)".

On page 33, line 21, strike out “(h)” and insert in lieu thereof “(g)”.

On page 34, line 9, strike out “(i)” and insert in lieu thereof “(h)”.

On page 34, line 24, strike out “(j)” and insert in lieu thereof “(i)”.

On page 37, line 1, strike out “(k)” and insert in lieu thereof “(j)”.

On page 37, line 12, strike out “(l)” and insert in lieu thereof “(k)”.

On page 38, line 1, strike out “(m)” and insert in lieu thereof “(l)”.

On page 38, line 13, strike out “(n)” and insert in lieu thereof “(m)”.

## AMENDMENT NO. 2319

Mr. HELMS. Mr. President, this amendment would establish peer review for scientific studies released or relied upon by EPA.

There is growing concern about the impact which unreviewed and unverified studies can have. A recent example of this problem is the Love Canal chromosome-damage study which produced national headlines in mid-May. Two weeks after the study was released, an EPA panel concluded that the study had virtually no value.

In situations such as the Love Canal study, it would be far better to provide for peer review before release of a study than to convene a panel after the study has been released. A prerelease review could have recognized the inadequacy of the Love Canal study. Assuring that health studies are only released or used when they conform to accepted scientific criteria is an essential component of any program dealing with the problems posed by hazardous substances.

This amendment calls upon EPA to prepare and publish draft criteria and procedures for review of studies within 6 months.

The criteria would relate to the collection of scientific data and the evaluation and use of health and safety studies. Such studies would address subjects such as accepted standards for data gathering and sampling, testing methodology, statistical analysis, appropriate controls, and the completeness of data.

The procedures would be designed to assure that studies have been reviewed and have satisfied the criteria before they are relied upon by EPA as the basis for any action or released to the public. They would include independent peer review of any study which the Administrator proposes to rely upon or release. The review may include internal EPA review or review by other Federal agencies or by persons or organizations outside the Federal Government.

The Science Adivsory Board could be called upon by EPA to participate in the review process. In addition, the Board would submit annual reports to Congress assessing the operation of the criteria and procedures.

Mr. President, this amendment would establish a procedure long needed to assure the quality of the information on which EPA relies.

III

AMENDMENT NO. **2319** Calendar No. **933**

Purpose: To establish peer review for scientific studies released or relied upon by the Environmental Protection Agency.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 10 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HELMS

Viz: At the end of the bill add the following new section:

### PEER REVIEW OF SCIENTIFIC STUDIES

SEC. 13. The Administrator of the Environmental Protection Agency, within six months after the date of the enactment of this Act, shall propose, and within three months after proposing shall establish—

(1) criteria for the collection of scientific data and the evaluation and use of health and safety studies generated or used by the Environmental Protection Agency, and

(2) procedures, including peer review, to assure that such studies satisfy the criteria established under

paragraph (1) before they are released or relied upon by the Environmental Protection Agency.

The Science Advisory Board of the Environmental Protection Agency shall monitor the criteria and procedures established under paragraphs (1) and (2) and shall report on an annual basis to the Congress with respect to the operation of such criteria and procedures.

## AMENDMENT NO. 2320 [Sec. 305]

Mr. **Helms**. Mr. President, the amendment I am proposing is not a new idea. In fact, it is an idea that has become so popular over the past years that in 1979 alone, almost 100 bills and amendments were introduced which incorporated similar provisions. Out of those bills, 14 acts have been signed into law.

This amendment will allow Congress to play a much-needed and far more active role than it now plays in overseeing the activities of the Environmental Protection Agency. It gives Congress the authority to disapprove, through concurrent resolution, any regulations promulgated by EPA within 45 days of their appearance in the Federal Register.

It is my hope that if this amendment is enacted, Congress will make full use of it to disapprove unnecessary and harmful regulations which our farmers and businesses are confronted with daily. And of course there are many variations on the theme of legislative veto. I believe this is a particularly moderate one, involving both Houses of Congress.

The language used in this amendment is quite similar to that included in the authorizing legislation for the Department of Education. Already, Congress has disapproved four education regulations on the basis of that legislation. I hope we can employ this amendment in the same productive fashion.

AMENDMENT NO. **2320** Calendar No. **933**

Purpose: To establish congressional review procedures for any regulation promulgated under this Act.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 10 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HELMS

Viz: At the end of the bill add the following new section:

### CONGRESSIONAL REVIEW OF PROPOSED REGULATIONS

SEC. 13. (a)(1) Concurrently with the publication in the Federal Register of any final regulation of general applicability under this Act, such regulation shall be transmitted to the Speaker of the House of Representatives and the President of the Senate. Such regulation shall become effective not less than forty-five days after such transmission unless the Congress shall, by concurrent resolution, find that the regulation is inconsistent with this Act, and disapprove the regulation.

(2) The failure of the Congress to adopt a concurrent resolution under paragraph (1) with respect to any final regu-

lation under this Act shall not represent, with respect to such regulation, an approval or finding of consistency with this Act for any purpose, nor shall such failure to adopt a concurrent resolution be construed as evidence of an approval or finding of consistency necessary to establish a prima facie case, or an inference or presumption, in any judicial proceeding.

(3) For purposes of this section, the term "regulation" means any rule, regulation, guideline, interpretation, or requirement of general applicability.

(b) The forty-five-day period specified in subsection (a) shall be deemed to run without interruption except during periods when either House is in adjournment sine die, in adjournment subject to the call of the Chair, or in adjournment to a day certain for a period or more than four consecutive days. In any such period of adjournment, the forty-five days shall continue to run, but if such period of adjournment is thirty calendar days or less, the forty-five-day period shall not be deemed to have elapsed earlier than ten days after the end of such adjournment. In any period of adjournment which lasts more than thirty days, the forty-five-day period shall be deemed to have elapsed after thirty calendar days have elapsed unless, during those thirty calendar days, either the Committee on Interstate and Foreign Commerce of the House of Representatives or the Committee on Environment and Public Works of the Senate (or both) shall have directed its chairman, in accordance with the rules of the committee and the rules of that House, to transmit to the Administrator of the Environmental Protection Agency a formal statement of objection to the final regulation. Such letter shall suspend the effective date of the final regulation until not less than twenty days after the end of such adjournment, during which the Congress may enact the concurrent resolution provided for in this section. In no event shall the final regulation go into effect until the forty-five-day period shall have elapsed, as provided for in this section, for both Houses of the Congress.

(c) Whenever a concurrent resolution of disapproval is enacted by the Congress under the provisions of this section, the Administrator of the Environmental Protection Agency may issue a modified regulation to govern the same or substantially identical circumstances, but shall, in publishing such modification in the Federal Register and submitting it to the Speaker of the House of Representatives and the President of the Senate, indicate how the modification differs from the final regulation earlier disapproved, and how he believes the modification disposes of the findings by the Congress in the concurrent resolution of disapproval.

(d) This section shall be effective with respect to any regulation (or amendment thereto) promulgated on or after the date of the enactment of this Act.

[From the Congressional Record, Sept. 24, 1980, pp. S13364-S13367]

## LIABILITY FOR CLEANUP OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES

### AMENDMENTS NOS. 2374 THROUGH 2388

(Ordered to be printed and to lie on the table.)

Mr. CANNON submitted 15 amendments intended to be proposed by him to the bill (S. 1480) to provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Mr. CANNON. Mr. President, today I am submitting a number of amendments to S. 1480, the "superfund" bill. Last Thursday, I made a statement on the floor which discussed some of the problems in S. 1480, particularly as they relate to the jurisdiction of the Senate Committee on Commerce, Science, and Transportation. At that time, I asked that certain letters be included in the RECORD which would further explain some of these problems (printed in the RECORD for September 18, at S12916). The amendments which I am submitting today respond to some of the concerns of the Commerce Committee developed as a result of its hearings and review of this important legislation.

Due to the extremely tight timeframe within which the committee has examined S. 1480, we have not had an opportunity to consider the bill or these amendments formally in committee session. However, the amendments do respond to many of the concerns with the bill that were raised at our hearings, and I am submitting them today in the interest of expeditious consideration of S. 1480 prior to adjournment. The committee welcomes any specific comments on the amendments from interested persons.

S. 1480 as presently drafted is unnecessarily broad and unclear as to its coverage [**Sec. 101**]. In this regard, one of my amendments would define the scope of the applicability of this act to insure that jurisdiction over foreign vessels and nationals is not inappropriately allowed.

Another amendment would modify the definition of "hazardous substances" so as not to include any substance which might cause harm, no matter how significant, to any organisms under any circumstances, and would limit that definition to substances that have been designated as hazardous [**Sec. 101(14)**]. The term "pollutant or contaminant," undefined in the bill, would be clarified by an amendment to relate the term to the clean-up authority of the President [**Sec. 104(a)(2)**]. The requirement that records be retained in perpetuity would be modified to grant the President authority to issue more practical regulations in this area [**Sec. 103(d)**].

Also, there is an amendment to clarify that the limitations on liability already mandated under the Price-Anderson Act for nuclear incidents will not be modified by S. 1480 [**Sec. 101(22)**].

I am particularly concerned about the broad application of certain provisions to transportation and commerce and the burdens which such application would impose. Accordingly, one of my amendments would exclude consumer products from the definition of "facility," thus precluding any unintended application of notification requirements and liability provisions to consumers **[Sec. 101(9)]**. Another amendment would define transportation for the purposes of this act so as not to impose unnecessary and duplicative information-gathering requirements on the transportaiton sector **[Secs. 101(26), and 104(e)]**. Furthermore, emissions from the exhaust of all transportation facilities would be excluded from the definition of "release," not just emissions from motor vehicles **[Sec. 101(22)]**. This amendment would assure equal treatment of all transportation modes and avoid the overly broad notification and other requirements for releases.

To avoid imposition on transportation modes of liability without appropriate notice of the hazard associated with a shipment, I am submitting an amendment which would coordinate the designation of materials as hazardous under the Hazardous Materials Transportation Act with the corresponding designation of hazardous substances under S. 1480 **[Secs. 306 (a) and (b)]**.

One area of primary concern to me is the virtually unlimited liability in S. 1480 and the effect that this would have on the insurability of carriers. The insurance industry has stated that as presently drafted S. 1480 is uninsurable. As one important step to avoid the risks of uninsurability, one of my amendments would establish a monetary limit on liability **[Sec. 107(c)]**. Another amendment would clarify that transporters are not to be liable for releases of "pollutants or contaminants," which are not designated substances, and of which carriers would have no notice of the potentially hazardous nature of the cargo **[Sec. 306(b)]**. To introduce more certainty into the liability scheme, I am submitting an amendment to clarify that recoverable damages are those expressly enumerated in S. 1480, and to limit the damages recoverable for the loss of use of property or natural resources **[Sec. 107(a)]**.

Another amendment would require the President to do a study on financial responsibility and the availability of insurance and would insure that any financial responsibility requirements for motor carriers under S. 1480 coordinate with those set forth in the Motor Carrier Act of 1980 **[Secs. 108(b), and 301(b)]**.

S. 1480 would declare a broad category of manufacturing, transporting, disposing, and handling activities as "ultrahazardous." This finding is unnecessary to carry out the purposes of the act and might adversely affect these activities and their insurability. Therefore, I am submitting an amendment to eliminate this unnecessary provision.

One area of extreme concern to insurance groups and their insureds is to have an idea of the extent of their liability exposure under S. 1480. In order to assist in clarifying this question, these amendments would assure preemption of claims that can be asserted under S. 1480 so that they may not be asserted under other laws **[Sec. 114]**. In light of the broad liability and compensation scheme of S. 1480, this would avoid onerous, duplicative, and overlapping claims. The amendment would expressly not affect the States or public's right to assert their common law or other claims not assertable under S. 1480.

Another amendment would reinstate the existing allocation of agency responsibilities for damage assessment activities **[Sec. 111(h)]**.

I am hopeful that these amendments will facilitate the passage of a sound piece of legislation in this area during the 96th Congress. Mr. President, I ask unanimous consent that all of my amendments be printed at this point in the RECORD with their accompanying explanations.

There being no objection, the amendments and explanations were ordered to be printed in the RECORD, as follows:

### AMENDMENT No. 2374 **[Sec. 101]**

On page 2, strike lines 5 through 11, and insert in lieu thereof the following:

"APPLICABILITY AND DEFINITIONS

"SEC. 2. (a) This Act shall apply to—

"(1) hazardous substance disposal sites, facilities, and areas within the United States;

"(2) releases or threats of releases of hazardous substances from vessels, public vessels, transportation facilities, and facilities into the navigable waters and waters of the contiguous zone, into ground water, public water supplies and air within the United States, and onto the land within the United States;

"(3) releases or threats of releases of hazardous substances into the waters seaward of the contiguous zone—

(A) from vessels which are or, where the context so provides, whose person in charge is otherwise subject to the jurisdiction of the United States at the time of the release where the release may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States; and

(B) from activities subject to regulation under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974; and

"(4) removal costs incurred under the Intervention on the High Seas Act respecting releases or threatened releases of substances other than convention oil, as defined in that Act.".

On page 2, line 16, insert "otherwise subject to the jurisdiction of the United States" after " 'onshore facility' ".

On page 12, line 2, strike "and", and on page 13, line 22, strike "amended.", and insert in lieu thereof the following: "amended; and

"(19) the term 'environment' shall mean the environment to which this Act applies, in accordance with subsection (a) of this section.".

On page 9, line 5, insert "or" before "any", and on line 6, strike ", or any Foreign government;" and insert in lieu thereof a semicolon.

EXPLANATION

S. 1480 appears not to contain any limitation on the geographical scope of its coverage. This amendment clarifies the term "environment" in the Act and assures that it does not apply to foreign vessels or nationals outside the appropriate jurisdiction of the Act.

In addition, S. 1480 defines natural resources to include any natural resources of a foreign government. This definition is too broad and all inclusive. This amendment would clarify that S. 1480 will not create recovery for damages to any natural resource of a foreign government unless such coverage is in conformance with the limitations of Section 2(a) as amended herein.

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### AMENDMENT No. 2375 **[Secs. 101(26), and 104(e)]**

On page 12, line 2, strike the "and" immediately following "1974;" and on page 12, line 3, insert the following new paragraph and redesignate succeeding paragraphs accordingly:

"(18) the term 'transport' or 'transportation' means the movement of a hazardous substance by any mode, including pipeline, and, incidental to such movement, any loading, unloading, handling or storage.

On page 23, line 20, strike "transportation".

On page 24, line 4, strike "sections." and insert in lieu thereof "actions: *Provided however,* That this subsection shall not apply to the transportation of any hazardous substance.".

### EXPLANATION

This amendment clarifies the meaning of "transport" and "transportation" as used in this Act, and it eliminates the applicability to transportation of the new information gathering provision in Section 3(d). The new authority granted to the Environmental Protection Agency and the states under section 3(d) is duplicative of and inconsistent with the current authority of the Department of Transportation in regulating hazardous materials transportation.

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## Amendment No. 2376 [Secs. 101(14), 103(b), 108(a), 107(j), and 104(a)(2)]

On page 8, line 9, strike all after "this" through the end of line 23 and insert in lieu thereof the following:

"Act."; and on line 7 of such page, insert "and" immediately before "(F)" therein.

On page 15, lines 11 and 12 and lines 18 and 19; page 16, lines 4 and 5 and lines 22 and 23; page 18, lines 7 and 8; and page 83, line 3, strike the words "(other than as defined in section 2(b)(13)(G) of this Act)".

On page 38, strike lines 1 through 12 and on line 13 redesignate subsection "(n)" as subsection "(m)".

On page 12, line 2, strike "and", and on page 13, line 22, strike "amended." and insert in lieu thereof the following: "amended; and

"(19) the term 'pollutant or contaminant' means any substance with respect to which the President exercises authority under section 3(c)(1) of this Act, other than a hazardous substance."

### EXPLANATION

S. 1480 in Section 2(b)(13) contains a two-tier definition of hazardous substance. The first tier, Section 2(b)13(A)-(F), would define a hazardous substance as any substance designated under certain specified lists. Section 2(b)(13)(G) is a "catch-all" which would define a hazardous substance to include virtually any substance that could cause damage, however slight, to any organism under any circumstances. This extreme breadth of definition is unnecessary for any of the purposes of the Act, since section 3(c)(1)(B) of S. 1480 provides that the President is generally authorized to respond to a release of a "pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare." Accordingly, this amendment would strike Section 2(b)(13)(G) and all reference thereto. This amendment also clarifies that for purposes of this Act, a "pollutant or contaminant" is any substance, other than a defined hazardous substance, with respect to which the President decides to exercise his response authority under Section 3(c)(1)(B).

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## Amendment No. 2377 [Sec. 107(a)]

On page 26, line 8, strike "all" and insert in lieu thereof "the following".

On page 26, line 10, strike "disposal, including—" and insert in lieu thereof "disposal.".

On page 26, strike lines 14-15 and lines 19-21.

On page 27, line 2, strike "resources;" and insert in lieu thereof "resources if the claimant derives at least 25% of his earnings from activities which utilize such property or resources;".

### EXPLANATION

Section 4(a)(2) of S. 1480 provides for recovery of damages, which result from a release under the Act, "including" seven specified types of damages. The specified damages in the Act are not to be treated as an inclusive list, and unspecified damaged are potentially recoverable. Given the joint, several, and strict liability scheme established in the bill, it is essential that the types of damages recoverable be specified in order to provide a degree of certainty and predictability. Without such predictability, insurers have indicated that the risks created by the bill would be uninsurable. This amendment would limit the damages recoverable to those specifically enumerated in the Act.

In addition, section 4(a)(2) of S. 1480 currently would impose liability for the loss of use of any property or natural resources and for any loss of income from such use resulting from a release of hazardous substances. These provisions vastly expand the number of potential claimants under the bill and would place claimants with relatively insignificant claims on a par with claimants with urgent need for recovery. For example, under the current provision, a sports fisherman using a pond that has been polluted would be entitled to compensation on the same basis as a claimant needing compensation for medical expenses. This amendment would eliminate these less significant claims from the scope of the bill and focus the liability scheme on the claimants with the most serious claims. In addition, the amendment would permit compensation for loss of income from the use of property or resources only if 25 percent of the claimant's income is derived from such use. This amendment would not affect the common law rights of those affected by this amendment. This amendment is consistent with the approach to damages taken by the Outer Continental Shelf Lands Act Amendments of 1978.

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## AMENDMENT No. 2378 [Sec. 101(9)]

On page 7, line 4, immediately before the semi-colon therein, insert the following: ", but such term does not include consumer products."

On page 13, line 22, insert the following new paragraph:

"(19) the term 'facility' as used in the phrase 'facility or site at which hazardous substances are stored or disposed of', or any similar phrase, shall not include any motor vehicle, rolling stock, pipeline or aircraft engaged in transportation.".

### EXPLANATION

S. 1480 defines the term "facility" broadly to include such things as "any equipment" and "any storage container," which could easily include consumer products. Such an interpretation of this term would lead to excessive notification and liability coverage by the Act. This amendment would explicitly clarify that the term "facility" does not include consumer products for the purposes of this Act.

In addition, this amendment will clarify that transportation facilities shall not be treated as facilities storing hazardous substances, which would trigger the notification provisions of S. 1480, if they are holding hazardous substances as part of the transportation process.

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## AMENDMENT No. 2379 [Sec. 306 (a) and (b)]

On page 91, after line 21, add the following new section:

### "TRANSPORTATION

"SEC. 13. (a) Each hazardous substance which is listed or designated as provided in section 2(b)(13) of this Act shall, within ninety days after the date of enactment of this Act or at the time of such listing or designation, whichever is later, be listed as a hazardous material under the Hazardous Materials Transportation Act.".

"(b) A common or contract carrier shall not be liable under Section 4 of this Act for damages or remedial action resulting from the release of a hazardous substance during the course of transportation which commenced prior to the effective date of the designation under Subsection (a) of this section.".

### EXPLANATION

The problem of identification of hazardous substances is a very real one for carriers. Although they are subject to the liability provisions and clean-up responsibilities under S. 1480, unless the hazardous substance is required to be identified as such on shipping documents, a carrier may not even know that he is transporting a hazardous substance. Tariff publication of safety requirements is based on DOT regulations and the best way to ensure that hazardous substances are identified as such when offered for transportation is to have them listed in the Hazardous Materials Table and certain entries required on shipping papers. This problem existed with regard to the Environmental Protection Agency's (EPA) regulation of the transportation of Section 311 hazardous substances, and hazardous wastes, and the solution involved listing of these materials by DOT.

Since identification via some indication of shipping documents is the key to a carrier knowing he is transporting hazardous substances, there may be some delay after publication, prior to the effective date of the designation, to allow the ADP equipment to be reprogrammed. The determination of whether a delay in effective date was necessary would be made by the Secretary of Transportation. It is envisioned that DOT rulemaking would coincide exactly with any EPA rulemaking. The (13)(a) provision would mean that notice and comment rulemaking procedures would not have to be, of course, by the agency making the § 2(b) designation.

Section 13(b) would remove liability for damages and remedial action prior to the effective date of the designation.

### AMENDMENT No. 2380 [Sec. 306(b)]

On page 25, line 20, insert the following after "Act": "(except where such a release of a pollutant or contaminant occurs during the transportation thereof by a common or contract carrier).".

#### EXPLANATION

This amendment clarifies that common or contract carriers would not be liable pursuant to section 3(c)(1) for releases of "pollutants or contaminants". "Pollutants or contaminants" are not listed as hazardous substances. There is no statutory requirement that common or contract carriers be notified of the substance which they are carrying unless it is designated as a hazardous substance. Therefore, it would be inappropriate to subject such carriers to the increased liability exposure of this section. They would have no way to assess the risks associated with the carriage of such unlisted substances and could not insure against these risks.

### AMENDMENT No. 2381 [Sec. 101(22)]

On page 11, line 4, delete "vehicle;" and insert "vehicle, rolling stock, pipe or pipeline, aircraft, or vessel or public vessel;".

#### EXPLANATION

S. 1480 presently excludes from the definition of release "emissions from the exhaust of a motor vehicle". S. 1480, however, appears to continue to cover the emissions from the exhaust of airplanes, trains, pipeline facilties, and vessels. There is no apparent rationale for this disparate treatment of the various transportation modes. This amendment would assure that all of the transportation modes are treated equally with respect to this exclusion under S. 1480.

### AMENDMENT No. 2382 [Sec. 101(22)]

On page 10, lines 17 through 19 strike "to the extent such release is covered by financial protection required" and insert in lieu thereof "if such release is subject to requirements with respect to financial protection mandated".

#### EXPLANATION

The Price-Anderson Act provides a $560 million limitation on public liability arising out of specified nuclear incidents. Section 2(b)(16)(ii) excludes such incidents from the definition of release "to the extent such release is covered by financial protection required by" the Price-Anderson Act. This provision could be interpreted to mean that once the Price-Anderson limits have been reached, unlimited recovery would be permitted under S. 1480. Such an interpretation would raise serious insurability questions for the nuclear industry. This amendment clarifies that S. 1480 does not alter the liability limits set forth in the Price-Anderson Act.

### AMENDMENT No. 2383 [Sec. 107(c)]

On page 25, line 25, insert immediately after "liable", the following:

", subject to the limititations set forth in subsection (b) of this section,".

On page 27, immediately after line 9, insert the following subsection and redesignate the subsequent subsections (and all cross-references thereto) accordingly:

"(b)(1) Except when the release or disposal is caused in whole or in part by willful misconduct or gross negligence, within the privity and knowledge of the liable person, or in whole or in part by a violation, within the privity and knowledge of the liable person, of applicable public health, safety, construction or operating standards or regulations of the Federal Government; or except where the liable person is subject to criminal penalties for failure to furnish any notice of a release required by section 3(a)(3)(B) of this Act or of a facility required by section 3(a)(4)(A) or fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of removal, the total of liability shall be limited to—

"(A) in the case of a vessel which does not carry hazardous substances in bulk as cargo or residue $150 per gross registered ton or $250,000, whichever is greater;

"(B) in the case of a vessel which carries hazardous substances in bulk as cargo or residue, $250,000 or $300 per gross registered ton (up to a maximum of $30,000,000), whichever is greater; or

"(C) in the case of a facility, $50,000,000 unless a lesser limit is established by the President under paragraph (2) of this subsection.

"(2) The President may issue regulations establishing limits of liability of no less than $5,000,000 and no more than $50,000,000 for various classes of onshore facilities and offshore facilities. Any such regulations shall take into account the size, type, location, storage and handling capacity and other matters relating to the likelihood of discharge or release in each such class and to the economic impact of such limits on each such class.".

#### EXPLANATION

This amendment establishes monetary limitations on liability for persons who are liable for releases of hazardous substances under the provisions of this bill. Concern has been expressed that without such liability limitations, it would be difficulty, if not impossible, for potentially liable persons to obtain insurance to cover their operations. The liability limitations would not be effective in instances where the release results from the liable person's gross negligence, willful misconduct, or knowing violation of relevant Federal regulations or where the liable party has failed to provide notification of a release or of a facility or has failed to cooperate in removal activities.

While the Committee has not had a full opportunity to review the limitations set forth in this amendment, the proposed limits are similar to provision in bills proposed by the Administration and passed by the House.

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### AMENDMENT No. 2384 [Secs. 111(h), and 301(c)]

On page 64, line 11, strike all from "Responsibility" through line 16; and strike the period on line 11 and insert in lieu thereof a semicolon.

On page 79, lines 7-22, strike section 6(e)(2) and redesignate the following paragraph accordingly.

#### EXPLANATION

Under the current National Contingency Plan, agency reponsibilities for performing damage assessment activities are allocated so that the National Oceanic and Atmospheric Administration is responsible for performing such assessments of oil spills in coastal waters and seaward, and the Environmental Protection Agency is responsible for other assessments. Section 6(e)(2) would alter this existing allocation by allowing that the division of responsibilities be made at the baseline of the territorial sea, a legal boundary which has no relevance to the allocation of scientific responsibilities and expertise. Since the existing allocation is highly effective, and there is no need to change it, this amendment would strike the allocation as set forth in S. 1480. If, in the future, the agencies determine that a difrerent allocation is appropriate, they can modify the existing allocation by amending the National Contingency Plan.

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### AMENDMENT No. 2385 [Secs. 108(b), and 301(b)]

On page 83, immediately after line 13, insert the following, and redesignate subsequent subsections (and all cross-references thereto) accordingly:

"(b) Financial responsibility requirements for transportation of hazardous substances by motor vehicle under this Act shall be those requirements established by the Secretary of Transportation pursuant to section 30 of the Motor Carrier Act of 1980 (49 U.S.C. 10927).

"(c)(1) The President shall conduct a study to determine (A) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of facilities subject to liability under section 4 of this Act (other than motor vehicles); (B) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, co-insurance provisions and exclusions; and (C) the extent to which operators and owners of particular categories of facilities may be able to establish financial responsibility through means other than commercial insurance.

"(2) The President shall submit the results of the study, together with recommendations for initial financial reponsibility standards for various classes of facilities, within two years after the date of enactment of this Act. The President shall submit an interim report on the study within one year of the date of enactment of this Act. In formulating recommendations for financial responsibility standards, the President shall consider the small business impacts of such standards and propose means by which those impacts might be eliminated or mitigated."

On page 83, insert at the end of line 25, ", where appropriate pursuant to the study mandated in subsection (c).".

On page 84, strike all from "Financial" on line 14 through "section." on line 17.

### EXPLANATION

This amendment would conform the financial responsibility provisions in Section 7 of S. 1480 in relation to motor vehicles to the requirements recently enacted in the Motor Carrier Act of 1980 (P.L. 96-296). Also, this amendment would require the President to carry out a two-year study and report to Congress on the financial responsibility requirements of other facilities covered by S. 1480. This study would make determinations with respect to whether the private insurance protection available to owners and operators of facilities subject to liability under Section 4 of S. 1480 would be adequate and whether the insurance market is sufficiently competitive to assure adequate types and conditions of insurance. The study is also to examine the extent to which operators and owners of particular categories of facilities may be able to establish financial responsibility through means other than commercial insurance. The results of this study are to serve as the basis for the financial responsibility regulations to be issued by the President, where appropriate, pursuant to this section.

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## AMENDMENT NO. 2386

On page 13, line 24, strike all after "(a)" through line 2 on page 14, and redesignate subsequent paragraphs (and all cross-references thereto) accordingly.

### EXPLANATION

S. 1480 as presently drafted would include a congressional declaration and finding that an enormously broad category of manufacture, use, transportation, treatment, storage, and disposal are ultrahazardous activities. Such a finding is not necessary for the purposes of the Act and would cover activities that in fact may not deserve such a designation. Therefore, this amendment would drop this overly broad designation.

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## AMENDMENT NO. 2387 [Sec. 114]

On page 85, delete lines 12 through 25 and insert in lieu thereof the following:

### "RELATIONSHIP TO OTHER LAWS

"SEC. 8. (a) Except as provided in this Act and subject to the provisions of subsection (b) of this section—

"(1) No action may be brought in any court of the United States, or of any State or political subdivision thereof, for costs or damages for which a claim may be asserted under this Act, and

"(2) no person may be required to contribute to any fund, the purpose of which is to pay compensation for claims for such costs or damages, nor to establish or maintain financial responsibility relating to the satisfaction of a claim for such costs or damages: provided, however, that nothing in this subsection shall preclude any State from imposing a tax or fee upon any person or upon any hazardous substance in order to finance the purchase or pre-positioning of hazardous substance release cleanup equipment or other preparations for the cleanup of a release of hazardous substances which affects such State.

"(b) Nothing in subsection (a) shall preclude or be interpreted to preempt any State from establishing liability funds, establishing limits of liability, setting financial responsibility requirements, or imposing any taxes upon any person, or upon oil or hazardous substances for the purpose of establishing liability and compensation schemes for losses and costs associated with releases of hazardous substances at any closed hazardous waste disposal facility.

"(c) Regardless of any State statutory or common law to the contrary, no person who asserts a claim for damages pursuant to this Act shall be deemed or held to have waived any other claim for damages not covered or assertable under this Act arising from the same incident, transaction or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim pursuant to this Act shall as a result of any determination of a question of fact or law be made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable under this title arising from the same incident, transaction or set of circumstances."

### EXPLANATION

Section 8 of S. 1480 provides that nothing in the bill shall be construed as preempting any State from imposing additional liability or other requirements. In light of the comprehensiveness of the liability and compensation scheme established by S. 1480, the effect of this provision is to allow states to establish their own overlapping and duplicative systems, with the costs of these systems to be borne ultimately by the public. Without a showing of need for such duplication, the states should not be allowed to impose these costs. Furthermore, if states retain this authority, a whole new level of uncertainty will be created for interstate transporters since they may be subject to different requirements in each state. This would severely aggravate the serious insurability problems which they would encounter under S. 1480.

This amendment provides that claims that may be asserted under this act (other than claims relating to closed hazardous waste dispsoal facilities) may not be asserted under other laws and that the states are preempted from establishing funds or imposing financial responsibility requirements for such claims. The amendment would expressly not prevent the states from providing remedies for damages not covered by S. 1480. In addition, states would specifically retain their authority to impose taxes or fees for the purchase of cleanup equipment. This amendment is consistent with both S. 1341, the administration's proposal, and H.R. 85, the House companion bill which passed the House on September 19, 1980.

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### AMENDMENT No. 2388 [Sec. 103(d)]

On page 17, strike lines 18 through "or" on line 24, and insert in lieu thereof the following:

"(B)(i) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to—

"(I) the location, title, or condition of a facility or site, or

"(II) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility or site; the records which shall be retained by any person required to provide the notification of a facility or site set out in subparagraph (A) of this paragraph. Such specification shall be in accordance with the provisions of this subparagraph.

"(ii) Beginning with the date of enactment of this Act, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at such earlier time as a waiver is obtained under clause (iii) of this subparagraph, it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in clause (i) of this subparagraph. Any person who violates this subparagraph shall upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

"(iii) At any time prior to the date which occurs fifty years after the date of enactment of this Act, any person identified under clause (i) of this subparagraph may apply to the Administrator of the Environmental Protection Agency for a waiver of the provisions of the first sentence of clause (ii) of this subparagraph. The Administrator is authorized to grant such waiver if, in his discretion, such waiver would not unreasonably interfere with the attainment of the purposes and provisions of this Act. The Administrator shall promulgate rules and regulations regarding such a waiver so as to inform parties of the proper application procedure and conditions for approval of such a waiver.

"(iv) Notwithstanding the provisions of this subparagraph, the Administrator of the Environmental Protection Agency may in his discretion require any such person to retain any record identified pursuant to clause (i) of this subparagraph for such a time-period in excess of the periods specified in clause (ii) of this subparagraph as the Administrator determines to be necessary to protect the public health or welfare.".

### EXPLANATION

This amendment would modify the recordkeeping requirements of Section 3(a)(4)(B) of S. 1480, which presently provide that all records required under this provision, however irrelevant they might be or become over time, would have to be kept in perpetuity. Such a provision could place a serious economic burden on the public as well as on those covered by the provision. Accordingly, this amendment would provide EPA with authority to develop regulations with respect to recordkeeping. In addition, the amendment provides that records are to be kept for 50 years unless the Administrator determines that a longer or shorter period is appropriate.

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[From the Congressional Record, Sept. 26, 1980, pp. S13633-S13634]

## LIABILITY FOR COMPENSATION AND CLEANUP OF HAZARDOUS SUBSTANCES

### AMENDMENTS NOS. 2395 THROUGH 2406

(Ordered to be printed and to lie on the table.)

Mr. SCHMITT submitted 12 amendments intended to be proposed by him to the bill (S. 1480) to provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

● Mr. SCHMITT. Mr. President, I am today submitting several amendments to the bill S. 1480. I ask unanimous consent that the amendments and accompanying explanations be printed in the RECORD.

There being no objection, the amendments and explanations were ordered to be printed in the Record, as follows:

### AMENDMENT No. 2395 [Sec. 101(22)]

Strike the word "discharge" wherever it appears in the bill, except on page 2, line 13, and on page 10, line 2.

"Release" is defined as including "discharge." However, in the bill "released" and "discharge" are both used together. "Discharge" is subsumed in "release" and thus is unnecessary. This amendment would clarify the use of these terms by removing "discharge" wherever it appears in the bill except where it appears in the definition of "release" and where it is defined through a cross-reference to the Clean Water Act. This would ensure that "discharge" is not intended to mean something more than "release."

### AMENDMENT No. 2396 [Sec. 101(9)]

On page 2, lines 9-10, strike "(including rolling stock)".

"Facility" is defined to include "rolling stock." Thus the reference "(including rolling stock)" after the term "facility" is unnecessary. This amendment would correct this redundancy.

### Amendment No. 2397 **[Sec. 101(1)]**

On page 2, line 13, insert the phrase "Act of God," after "terms".

On page 3, strike lines 3 through 7 and redesignate succeeding paragraphs accordingly.

Under the bill as presently drafted, the term "act of God" is defined in an unnecessarily limited way to include "other natural phenomenon" of an "exceptional, inevitable and irresistible character." In addition, to be an "act of God," its effects could not have been "prevented or avoided" by the "exercise of due care or foresight." The Clean Water Act defines an "Act of God" as an "unanticipated grave natural disaster." This amendment would conform the definition of "act of God" in S. 1480 to the one in the Clean Water Act.

Of particular concern in the definition as drafted is the breadth and unclear meaning of the terms "exceptional" and "irresistible." In addition, the requirement that one claiming this defense must show that the effect of the event "could not have been prevented or avoided by the exercise of due care or foresight" seems unduly burdensome. Such unclear and additive limitations would make the "act of God" defense almost legally unassertable, which seems harsh in light of the already limited number of defenses allowed under S. 1480.

### Amendment No. 2398 **[Sec. 101 (9) and (28)]**

On page 7, line 4, immediately before the semicolon therein, insert the following: ", but such term does not include vessels or public vessels".

The definition of the term "facility" in S. 1480 is sufficiently broad to include vessel or parts of vessels. However, the term "vessel" is separately defined and used in the bill. This amendment is intended to clarify that "vessels" are not also intended to be "facilities" for the purposes of this Act.

### Amendment No. 2399 **[Sec. 101(22)(D)]**

On page 11, line 1, strike "field".

S. 1480 currently excludes the "normal field application of fertilizer" from the definition of "release." The reference to "field" is too restrictive. Fertilizer could normally and appropriately be used in areas other than a field, including gardens or green houses. Such normal use should be exempted from the coverage of the Act, and this amendment provides for such exclusion.

### Amendment No. 2400 **[Sec. 107(i)]**

On page 37, line 3, strike "field."

Section 4(k) provides that the liability provisions of S. 1480 shall not apply to the "normal field application" of pesticides. The limitation to "field" application is too restrictive; no distinction should be drawn between the application of pesticides to fields and forests or other "normal" use of pesticides. This amendments clarifies that no such distinction is to be drawn.

### Amendment No. 2401 **[Sec. 103(c)]**

On page 17, strike all after "both." on line 13 through 17.

Section 3(a)(4)(A) of S. 1480 provides that certain persons are required to notify the Environmental Protection Agency of the existence of hazardous substance storage or disposal facilities. Criminal penalities are applicable for failure to provide such notification. In addition, the last sentence of this paragraph states that any person failing to provide such notification shall not be entitled to any limitation of liability under "this or any other law," or to any defenses to liability under this Act.

This amendment would strike this last sentence. The criminal penalties should be sufficient to encourage notification. Furthermore, there is no limitation of liability in this bill, and it is unclear to what limitations under other laws the sentence might refer. Finally, the denial of defenses is unrelated to, and is excessive for, such an offense.

### Amendment No. 2402 **[Sec. 112(b)(2)]**

On page 73, strike lines 15 through 18, and insert in lieu thereof the following:

> "(C) The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form

of the notice which would be appropriate to carry out the purposes of this subparagraph. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential injured parties.".

Section 6(b)(3)(C) of S. 1480 provides;

"The owner and operator of any vessel or facility from which a hazardous substance has been discharged or released shall provide notice to all potential injured parties."

This provision provides no guidance as to what type of notice is sufficient, nor does it identify the scope of "all potential" parties. This amendment would strike this provision and provide instead that the President shall promulgate regulations with respect to such notice.

### AMENDMENT No. 2403 [Sec. 107(e)]

On page 34, line 20, strike "transferor" and insert in lieu thereof "transferee.".

This amendment clarifies that it is the person to whom the property is being transferred rather than the transferor, who must provide assurance of financial responsibility "consistent with the degree and duration of risks associated with such facility or site". The person who will be given responsibility for the facility should prove that he can handle the risk.

### AMENDMENT No. 2404 [Sec. 111 (a) and (c)]

Page 61, line 19, insert ", other than removal costs or expenses and remedial action costs referred to in subparagraph (C) of this paragraph," after "costs of removal".

Page 61, line 24, insert ", other than removal costs or expenses and remedial action costs referred to in subparagraph (C) of this paragraph," after "costs of removal".

On page 62, strike lines 3 through 9, and insert in lieu thereof:

"(C) all removal costs or expenses and remedial action costs incurred under section 3 of this Act, subsections (c) and (d) of section 311 of the Clean Water Act respecting releases or threatened releases of hazardous substances, or the Intervention on the High Seas Act respecting releases or threatened releases of substances other than convention oil, as defined in that Act, without regard to the potential liability of any person for such costs and expenses;".

On page 11, strike "and" on line 10, and on line 18, insert the following immediately before the semicolon therein:

"(iv) costs incurred under the Intervention on the High Seas Act respecting releases of substances other than convention oil (as defined in that Act); and

"(v) costs incurred under section 3(c)(1) of this Act."

The purposes of this amendment are twofold: First, to clarify that Federal response costs are recoverable from the Fund regardless of whether such costs can be recovered from a liable person; and, second, to clarify that response costs incurred pursuant to the Intervention on the High Seas Act are also recoverable from the Fund.

### AMENDMENT No. 2405 [Sec. 108(a)(1)]

On page 83, line 4, strike "greater" and insert in lieu thereof the following:

"greater: *Provided*, That the President may prescribe by regulation levels of financial responsibility requirements applicable to persons owning or operating more than one vessel: *And provided further*, That in no case may the total amount of financial responsibility so prescribed to be less than the amount applicable to the largest of those vessels as determined under this paragraph. Financial responsibility may be established by any one, or any permitted combination, of the following methods acceptable to the President: (A) evidence of insurance; (B) guaranty; (C) surety bond; or (D) qualification as a selfinsurer. Any bond filed shall be issued by a surety company authorized to do a surety business in at least one of the United States).".

Section 7(a)(1) provides that the owner or operator of certain vessels must maintain evidence of financial responsibility as prescribed in that section. Under this provision, owners of more than one vessel would be required to maintain such evidence for each vessel owned, which would result in excessive and unnecessary insurance requirements for such owners. This amendment would permit the President to set lower requirements for such owners, so long as the owner has at least the level required for his largest vessel. Second, the amendment clarifies that such financial responsibility may be established by evidence of insurance, guaranty, surety bond, or qualification as a self-insurer. This amendment is consistent with the existing provision in section 311(p)(1) of the Clean Water Act.

### Amendment No. 2406 [Sec. 112(c)(3)]

On page 77, lines 20 and 21, strike "and, without regard to any limitation of liability," and insert in lieu thereof "and".

This amendment would clarify that the Fund could not collect against the party "without regard to any limitation of liability". It would be inconsistent and inappropriate to allow the Fund to act against a party when he has been otherwise excluded due to limitaiton of liability provisions.

III

AMENDMENT NO. 2408 Calendar No. 933

Purpose: To limit the amount recoverable for lost natural resources to the amount actually used to restore or replace such resources.

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 26 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

Amendment intended to be proposed by Mr. Hatch

Viz:

On page 28, line 5, strike out the word "but" and all that follows through line 7 and insert in lieu thereof: "and the measure of such damages shall be limited to the sums actually used to restore or replace such resources.".

III

AMENDMENT NO. **2409** Calendar No. **933**

Purpose: To delete the provision that determinations of apportionment or contribution shall not occur until after the determination of liability and claims payments to claimants.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 26 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

On page 32, strike out line 9 through 16.

III

AMENDMENT NO. **2410** Calendar No. **933**

Purpose: To require that assessments for natural resource damages be based on proven as opposed to speculative damages.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 26 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

On page 78, line 19, after the word "assessments", insert the words "of proven economic damages"; on lines 20 and 21 strike out the words "including establishing measures of damages based on units of discharge or release or units of affected area,".

III

AMENDMENT NO. 2411 Calendar No. 933

Purpose: To remove the presumption of cause in any claim for medical expenses.

IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 26 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

On page 29, strike out lines 22 through 25; on page 30 strike out lines 1 through 12.

III

AMENDMENT NO. 2412 Calendar No. **933**

Purpose: To restrict the Fund's ability to sue to violations of S. 1480.

**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 26 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH

Viz:

On page 77, line 25, strike out "any law" and insert in lieu thereof "this act".

[From the Congressional Record, Sept. 30, 1980, pp. S14130-S14131]

## LIABILITY AND COMPENSATION FOR CLEANUP OF HAZARDOUS WASTE

### AMENDMENT NO. 2611 [Sec. 111]

(Ordered to be printed and to lie on the table.)

Mr. HARRY F. BYRD, Jr., submitted an amendment intended to be proposed by him to the bill (S. 1480) to provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Mr. HARRY F. BYRD, Jr. Mr. President, it has been over 5 years since Americans first became aware of the Kepone contamination of the James River in Virginia. Since that time, other hazardous chemical waste incidents have been discovered throughout the Nation, most notably Love Canal in New York and the "Valley of the Drums" in Kentucky.

Indeed, the hazardous substance and toxic chemical waste problem has mushroomed as an issue of national concern, and it is an issue which has had significant impact on the health and economic livelihood of many Americans throughout our Nation, including many Virginians.

Many studies have already been released which identify health and related environmental problems associated with the effects of haphazard disposal of chemical wastes.

After reviewing testimony at recent hearings of the Senate Committee on Finance, I have become increasingly concerned about the economic impact which the Kepone problem has had on small businesses in my own State of Virginia.

I am today submitting an amendment to S. 1480, the hazardous wastes bill, which would provide assistance to individuals in small businesses affected by the chemical contamination and pollution of the James River by Kepone in 1975. This amendment will not add to the cost of the bill.

The existing provisions of S. 1480 provide a mechanism for cleanup costs associated with the Kepone problem. However, Virginians who have sustained severe economic losses due to the closing of the James River to commercial fishing and some types of recreation during the last 5 years are not presently eligible for further compensation.

It has been brought to my attention that most damage settlements have been made out of court because small businesses have not been able to pay the expensive court costs involved, or are not able to continue litigation for an extended period of time without suffering undue hardship, economic losses, or even bankruptcy.

My amendment would specifically provide payment from the fund of all legitimate claims for capital loss or loss of income suffered by the sport and commerical fishing industries, and by businesses dependent on recreational use of the James River, as a result of Kepone pollution.

This amendment simply would make Virginians along the James River eligible for the same kind of economic compensation already authorized in the bill for fishing interests damaged since 1978. As I pointed out earlier, no additional funding will be required.

I ask unanimous consent that the text of my amendment to S. 1480 be printed at this point in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

III

AMENDMENT NO. 2611 Calendar No. 933

Purpose: ..............................................................................

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IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.

# S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

September 30 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HARRY F. BYRD, JR.

Viz:

On page 66, after line 17, insert the following new subparagraph and redesignate succeeding subparagraphs accordingly:

"(P) payment of any claim for any capital loss or loss of income by a harvestor or processor of fish or shellfish or by any business directly dependent on sport or commercial fishing or other recreational use of the James River due to destruction or loss of value of any fishery stock, and harvested fish or shellfish, or any fish or shellfish product; or restriction on use of any such fishery stock, fish, shellfish or product or waters, resulting from contamination of the James River and associated waters by the chemical substance known as kepone;".

[From the Congressional Record, Nov. 18, 1980, pp. S14642-S14643]

## COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980—S. 1480 AND H.R. 7020

### AMENDMENT NO. 2622

(Ordered to be printed and to lie on the table.)

Mr. STAFFORD (for himself, Mr. Randolph, Mr. Mitchell, Mr. Moynihan, Mr. Bradley, Mr. Williams, Mr. Heinz, Mr. Burdick, and Mr. Leahy) submitted an amendment intended to be proposed by them to the bill (S. 1480) to provide for liability compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

### AMENDMENT NO. 2623

(Ordered to be printed and to lie on the table.)

Mr. STAFFORD (for himself, Mr. Randolph, Mr. Mitchell, Mr. Moynihan, Mr. Bradley, Mr. Williams, Mr. Heinz, Mr. Burdick, and Mr. Leahy) submitted an amendment intended to be proposed by them to the bill (H.R. 7020) to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment, to establish a hazardous waste response fund to be funded by a system of fees, to establish prohibitions and requirements concerning inactive hazardous waste sites, to provide for liability of persons responsible for releases of hazardous waste at such sites, and for other purposes.

Mr. STAFFORD. Mr. President, today I introduce a substitute for various "superfund" bills pending in the Senate. I introduce this substitute on behalf of myself, Mr. Randolph, Mr. Moynihan, Mr. Bradley, Mr. Mitchell, Mr. Heinz, Mr. Burdick, Mr. Williams, and Mr. Leahy.

As I said last Friday, I believe that S. 1480 is the best bill for the task at hand. It is the product of more than 3 years of effort by members of the Senate Committee on Environment and Public Works. It is a sound bill. It is a workable bill.

However, in consideration of the urgent need for remedial legislation to respond to the problems caused by the release of chemical poisons into our environment, I am putting forward a compromise. This compromise incorporates those parts of S. 1480, H.R. 7020 and H.R. 85 on which there is broad consensus. Given the lateness of this session, it is my hope that this proposal will be an acceptable compromise for all concerned.

The compromise embodies concessions that I would otherwise not make. But I make the concessions because, even as we discuss the issue in this chamber, more chemical poisons are being released into our environment, threatening the health and well being of present and future generations of Americans.

It remains my view that the need to develop legislation to deal with toxic substances demands the highest priority of the Congress. We have worked on it for two Congresses already, and 80 percent of the public believes legislation is needed.

In the last few days, we have been urged to adopt the two House-passed bills, H.R. 85 and H.R. 7020, and, thus, avoid the need for a conference or for further legislative action. Because so many persons have seriously advanced this proposition, I feel I should explain why this alternative is not acceptable.

For 3 years, the Senate has worked on a bill that would respond to emergencies caused by chemical poisons, and to seek to discourage the release of those chemicals into the environment. In many ways, the Senate bill is analagous to the natural disaster assistance programs we have enacted into law. When those natural disaster assistance laws were enacted, no one suggested that we should help victims of floods, but not victims of earthquakes.

It makes no more sense to make that kind of distinction when dealing with chemical emergencies than it does when dealing with natural emergencies. But, that is what the House bills do. They cover two narrow areas—spills of 299 substances into navigable waters, and releases from inactive hazardous waste sites.

It may be instructive to review some actual chemical emergencies to judge whether they would have been covered if the two House bills had been law when the emergencies happened.

The release of Kepone into the James River, which posed a threat to the entire lower Chesapeake Bay, would not be covered by the House bills.

The Hudson River's contamination by PCB's would not be covered.

PBB's in Michigan, where damages exceeded $100 million, would not be covered.

DBCP, a pesticide known to cause sterility in males at high dosage levels, is found in more than one-third of the wells in the San Joaquin Valley. That condition would not be covered by the House bills.

TCE contaminates wells throughout Pennsylvania and many parts of New England; 90 percent of these cases would not be covered.

PCB's were released a few months ago in an accident at a feed plant in Montana and the contamination found its way to 19 States and 2 foreign countries. That would not be covered.

Train derailments at Waverly, Tenn., and at Crestview, Fla., that killed and injured scores of people would not be covered; nor would the abandonment of 60,000 pounds of leaking and dangerous drums of phosphorous in Hagerstown, Md.

Those are just a few examples. But, they are the rule, not the exception. There is simply no good reason for us to help one victim of poison, but not another. The test should not be whether a person was poisoned by river water rather than well water, or by toxic waste buried in the ground rather than toxic waste discharged to the ground. The test should be whether the person was poisoned. I assure you that the victim does not care to make those distinctions, nor should the Congress.

Finally, we should not underestimate the impact that jurisdictional considerations had on the shape and scope of the two House bills.

Each of those bills is a good first step within narrow confines. But, even if Representative Florio had wanted to go beyond inactive hazardous waste sites, he almost certainly would have come up against a jurisdictional barrier. Similarly, the House Public Works Committee would have run into a jurisdictional barrier if it had sought to go beyond the issue of navigable waters.

In the Senate, the Committee on Environment and Public Works could go further because jurisdiction over all the issues is consolidated in our committee. With that option available to us, our members elected to do not only what they could, but also what sound public policy demanded—report a comprehensive bill. That is really what the Senate and the Congress should do, as well.

But, circumstances and time present the barrier here.

There is no need at this time to attempt to place the blame for our inability to enact needed legislation. There have been honest differences of opinion among Members of the Congress on this matter, and among representatives of industries affected by the various proposals.

From the very beginning, I have invited—even urged—responsible companies to come forward to work with us to develop a sound and reasonable bill. S. 1480 reflects many of the proposals offered to us by some of those companies. My compromise proposal, which I introduce today, reflects even more in an effort to gain some time in our struggle to reduce the hazards of these toxic substances.

I am confident that ultimately there will be a law, whether it is this year or the next or the year after that. The question is not whether, but when—and what kind.

The only other question is whether the victims of this struggle will include not only Americans who have been poisoned by chemicals, but companies and industries that have squandered their credibility and respect. Someday, they, too, may go to the well to draw water and find that it has been poisoned. I appeal to them to join with us in the effort to take this first step in the quest to protect ourselves and our environment against the hazards of chemical poisions.

Mr. MITCHELL. Mr. President, I have expressed my strong support for superfund legislation on many occasions to my colleagues in the Senate and to my constituents in Maine.

It is my belief that S. 1480, which I have cosponsored, the bill reported by the Environment and Public Works Committee, represents a workable, reasonable approach to hazardous waste cleanup and compensation. I also believe that a substantial number of my colleagues support S. 1480.

However, as the 96th Congress draws to a close, efforts have been made to delay Senate consideration of S. 1480.

In light of the lateness of the date and the urgent need for a Federal response to the ever-growing problem of toxic wastes, I am pleased to cosponsor a substitute to S. 1480 introduced today by my colleague from Vermont, Senator Stafford.

This bill represents a positive step in controlling the spread of chemical wastes, cleaning up inactive dumpsites as well as ongoing releases of hazardous substances into the environment, and compensating victims of chemical poisons.

The bill mandates remedial Government response to releases of hazardous substances without regard to the medium in which it occurs, as does S. 1480.

The bill retains the concept of a fund for the payment of cleanup costs, natural resoruce damages, and out-of-pocket medical expenses for victims injured by toxic substances.

A strict liability standard is established for the release of hazardous wastes that require cleanup, or that result in damages to natural resources, as in S. 1480.

Mr. President, there are elements of S. 1480 that are not contained in this substitute bill. The provisions we have eliminated were those that generated considerable controversy, resulting in the delay of Senate passage of S. 1480. While I supported these provisions, I am willing to accommodate the concerns expressed, in a spirit of compromise.

We are faced with a problem of potentially crisis proportions. The Surgeon General of the United States has stated that toxic wastes may be the most serious threat to public health in our country in the next decade. So it is in this spirit of urgency that I cosponsor this substitute to S. 1480 today.

[NOTE: The text of Amendment No. 2622 to S. 1480 was printed in the CONGRESSIONAL RECORD of Nov. 19, 1980, pp. S14714-S14724 and follows. The text of Amendment No. 2623 to H.R. 7020 is identical to the text of Amendment No. 2622 to S. 1480 and therefore is not reprinted here.]

AMENDMENT NO. **2622** Calendar No. **933**

Purpose: ..................................................................................

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**IN THE SENATE OF THE UNITED STATES—96th Cong., 2d Sess.**

## S. 1480

To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

November 18 (legislative day, June 12), 1980

Ordered to lie on the table and to be printed

AMENDMENT (in the nature of a substitute) intended to be proposed by Mr. STAFFORD (for himself, Mr. RANDOLPH, Mr. MITCHELL, Mr. MOYNIHAN, Mr. BRADLEY, Mr. WILLIAMS, Mr. HEINZ, Mr. BURDICK, and Mr. LEAHY)

Viz: Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980".

# TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

## DEFINITIONS

SEC. 101. For purpose of this title, the term—

(1) "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(2) "Administrator" means the Administrator of the United States Environmental Protection Agency;

(3) "barrel" means forty-two United States gallons at sixty degrees Fahrenheit;

(4) "claim" means a demand in writing for a sum certain;

(5) "claimant" means any person who presents a claim for compensation under this Act;

(6) "damages" means damages for injury or loss of natural resources as set forth in section 107(a) or 111(b) of this Act;

(7) "drinking water supply" means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals;

(8) "environment" means (A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976, and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States;

(9) "facility" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use;

(10) "federally permitted release" means (A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a

condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems, (D) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act, (E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005 (a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases, (F) any release in compliance with a legally enforceable permit issued under section 102 of section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, (G) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of the Environmental Protection Agency) pursuant to part C of the Safe Drinking Water Act, (H) any emission into the air subject to a permit or control regulation under section 111, section 112, title I part C, title I part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections, (I) any injection of fluids or other materials authorized under appropriate State law (i) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (J) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307 (b) or (c) of the Clean Water Act and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act, and (K) any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954;

(11) "Fund" or "Trust Fund" means the Hazardous Substance Response Fund established by section of this Act or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 107(k) of this Act, the Post-closure Liability Fund established by section of this Act;

(12) "ground water" means water in a saturated zone or stratum beneath the surface of land or water;

(13) "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act;

(14) "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water

Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas);

(15) "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas;

(16) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local govenment, or any foreign government;

(17) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(18) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States;

(19) "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party;

(20)(A) "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility immediately prior to such abandonment. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility;

(B) in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 107(a) (3) or (4) of this Act, (i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the generator of such hazardous material shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control;

(C) in the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility and except as provided in section 107(a) (3) or (4) (i) the term "owner or operator" shall not include such common or contract carrier, and (ii) such common or contract carrier shall not be considered to have caused or contributed to any release at such disposal or treatment facility resulting from circumstances or conditions beyond its control;

(21) "person" means an individual, firm, corporation, association, partnership, consortium, joint ven-

ture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body;

(22) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes (A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B) emissions from the exhaust of a motor vehicle, and (C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of this title or any other response action, any release from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978, and (D) the normal field application of fertilizer;

(23) "remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, necessary actions taken in the event of

the threat of release of hazardous substances into the environment, necessary actions to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of this Act, and any emergency assistance which may be provided under the Disaster Relief Act of 1974;

(24) "remedy" or "remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such onsite actions

as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (A) are more cost-effective than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility, or (C) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials;

(25) "respond" or "response" means remove, removal, remedy, and remedial action;

(26) in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term "transportation" shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance;

(27) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction;

(28) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(29) "disposal", "hazardous waste", and "treatment" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act; and

(30) "territorial sea" shall have the meaning provided in section 311(a) and "contiguous zone" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act.

## REPORTABLE QUANTITIES AND ADDITIONAL DESIGNATIONS

SEC. 102. (a) The Administrator shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 101(14) of this title, such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare or the environment, and shall promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to section 103 of this title. The Administrator may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the hazardous substance is released.

(b) Unless and until superseded by regulations establishing a reportable quantity under subsection (a) of this section for any hazardous substance as defined in section 101(14) of this title, (1) a quantity of one pound, or (2) for those hazardous substances for which reportable quantities have been established pursuant to section 311(b)(4) of the Federal Water Pollution Control Act, such reportable quantity, shall be deemed that quantity, the release of which requires notification pursuant to section 103 (a) or (b) of this title.

### NOTICES, PENALTIES

SEC. 103. (a)(1) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 102 of this title, immediately notify the National Response Center established under the Clean Water Act of such release. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State.

(b) Any person—

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the

United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that determined pursuant to section 102 of this title who fails to notify immediately the appropriate agency of the United States Government as soon as he has knowledge of such release shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) Within one hundred and eighty days after the enactment of this Act, any person who owns or operates or who at the time of disposal owned or operated, or who accepted hazardous substances for transport and selected, a facility at which hazardous substances (as defined in section 101(14)(C) of this title) are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under, or has been accorded interim status under, subtitle C of the Solid Waste Disposal Act, notify the Administrator of the Environmental Protection Agency of the existence of such facility, specifying the amount and type of any hazardous substance to be found there, and any known, suspected, or likely releases of such substances from such facility. The Administrator may prescribe in greater detail the manner and form of the notice and the information included. The Administrator shall notify the affected State agency, or any department designated by the Governor to receive such notice, of the existence of such facility. Any person who knowingly fails to notify the Administrator of the existence of any such facility shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person who fails to provide the notice required by this subsection shall not be entitled to any limitation of liability or to any defenses to liability set out in section 107 of this Act: *Provided however,* That notification under this subsection is not required for any facility which would be reportable hereunder solely as a result of any stoppage in transit which is temporary, incidental to the transportation movement, or at the ordinary operating convenience of a common or contract carrier, and such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(d) After the enactment of this Act, it shall be unlawful for any person required to provide the notification of a facility under subsection (c) of this section knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records relating to the location, title, or condition of the facility or the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited therein. Any person who violates this subsection shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

(e) This section shall not apply to the field application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act.

(f) No notification shall be required under subsection (a) or (b) of this section for any release of a hazardous substance—

(1) which is required to be reported under subtitle C of the Solid Waste Disposal Act or regulations thereunder and which has been reported to the National Response Center, or

(2) which is a continuous release, stable in quantity and rate, and is—

(A) from a facility for which notification has been given under subsection (c) of this section, or

(B) a release of which notification has been given under subsection (a) and (b) of this section for a period sufficient to establish the continuity, quantity, and regularity of such release:

*Provided*, That notification in accordance with subsection (a) and (b) of this paragraph shall be given for releases subject to this paragraph annually, or at such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring.

### RESPONSE AUTHORITIES

SEC. 104. (a)(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare, the President is authorized to act to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure which the President deems necessary to protect the public health or welfare or the environment, unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party.

(2) For the purposes of this section, "pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organism or their offspring. The term does not include

petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as hazardous substances under section 101(14) (A) through (F) of this title.

(b) Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

(c)(1) Unless (A) the President finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (B) the President has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, obligations from the Fund, other than those authorized by subsection (b) of this section, shall not continue after $1,000,000 has been obligated for response actions or six months has elapsed from the date of initial response to a release or threatened release of hazardous substances.

(2) The President shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

(3) The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that (A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act for any necessary offsite storage, destruction,

treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or (ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before the date of enactment of this Act for cost-eligible response actions and claims for damages compensable under section 111 of this title relating to the specific release in question: *Provided, however,* That in no event shall the amount of the credit granted exceed the total response costs relating to the release.

(d)(1) Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed for the reasonable costs thereof from the Fund. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section.

(2) If the President enters into a cost-sharing agreement pursuant to subsection (c) of this section or a contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the President may, after providing sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

(3) Where a State or a political subdivision thereof is acting in behalf of the President, the President is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this title, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(e)(1) For purposes of assisting in determining the need for response to a release under this title or enforcing the provisions of this title, any person who stores, treats, or disposes of, or. where necessary to ascertain facts not available at the facility where such hazardous substances are located, who generates, transports, or otherwise handles or has handled, hazardous substances shall, upon request of any officer, employee, or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee, or representative of a State, where appropriate, furnish information relating to such substances and permit such person at all reasonable times to have access to, and to copy all records relating to such substances. For the purposes specified in the preceding sentence, such officers, employees, or representatives are authorized—

(A) to enter at reasonable times any establishment or other place where such hazardous substances are or have geen generated, stored, treated, or disposed of, or transported from;

(B) to inspect and obtain samples from any person of any such substance and samples of any containers or labeling for such substances. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or person in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume of weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or person in charge.

(2)(A) Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the Environmental Protection Agency) shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the Administrator (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.

(B) Any person not subject to the provisions of section 1905 of title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(C) In submitting data under this Act, a person required to provide such data may (i) designate the data which such person believes is entitled to protection under this subsection and (ii) submit such designated data separately from other data submitted under this Act. A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(D) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or othewise obtained by the Administrator (or any representative of the Administrator) under this Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(f) In awarding contracts to any person engaged in response actions, the President or the State, in any case where it is awarding contracts pursuant to a contract entered into under subsection (d) of this section, shall require compliance with Federal health and safety standards established under section 301(f) of this Act by contractors and subcontractors as a condition of such contracts.

(g)(1) All laborers and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The President shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40 of the United States Code.

(h) Notwithstanding any other provision of law, subject to the provisions of section 111 of this Act, the President may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this Act. Upon determination that such procedures are necessary, the President shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

(i) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic

Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control, the Administrator of the Occupational Safety and Health Administration, and the Administrator of the Social Security Administration, effectuate and implement the health related authorities of this Act. In addition, said Administrator shall—

(1) in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;

(2) establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

(3) in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

(4) in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, chromosomal testing, epidemiological studies, or any other assistance appropriate under the circumstances; and

(5) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.

### NATIONAL CONTINGENCY PLAN

SEC. 105. Within one hundred and eighty days after the enactment of this Act, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Federal Water Pollution Control Act, to reflect and effectuate the responsibilities and powers created by this Act, in addition to those matters specified in section 311(c)(2). Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants and contaminants, which shall include at a minimum:

(1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this Act;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

(6) a method for and assignment of responsibility for reporting the existence of such facilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities;

(7) means of assuring that remedial action measures are cost effective over the period of potential exposure to the hazardous substances or contaminated materials;

(8)(A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, State preparedness to assume State costs and responsibilities, and other appropriate factors;

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the President shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually. Within one year after the date of enactment of this Act, and annually thereafter, each State shall establish and submit for consideration by the President priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the President shall consider any priorities established by the States. At least four hundred of the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets". Other priority facilities or incidents may be listed singly or grouped for response priority purposes; and

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor. The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 311(c)(2) (F) and (G) and (j)(1) of the Federal Water Pollution Control Act. Following publication of the revised national contingency plan, the response to

and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The President may, from time to time, revise and republish the national contingency plan.

### ABATEMENT ACTION

SEC. 106. (a) In addition to any other action taken by a State or local government, when the President determines that there may be a substantial danger to the public health or welfare because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

(b) Any person who willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day in which such violation occurs or such failure to comply continues.

(c) Within one hundred and eighty days after enactment of this Act, the President shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this Act. Such guidelines shall to the extent practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for coordinating response actions with the issuance of administrative orders, enforcement of standards and permits, the gathering of information, and other imminent hazard and emergency powers authorized by (1) sections 311(c)(2), 308, 309, and 504(a) of the Federal Water Pollution Control Act, (2) sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act, (3) sections 1445 and 1431 of the Safe Drinking Water Act, (4) sections 113, 114, and 303 of the Clean Air Act, and (5) section 7 of the Toxic Substances Control Act.

## LIABILITY

SEC. 107. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal, treatment, or transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be strictly liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State;

(B) any other necessary costs of removal incurred by any other person consistent with the national contingency plan published under section 105 of this Act; and

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss.

(b) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant, if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party

and the consequences that could result from such acts or omissions; or

(4) any combination of the foregoing paragraphs.

(c) If any person who is liable for a release or threat of release of a hazardous substance fails to properly provide removal or remedial action upon request of the President, such person shall be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. The President is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 112(c) of this Act. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

(d) No person shall be liable under this title for damages as a result of actions taken or omitted in preparation for, or in the course of, rendering care, assistance, or advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(e)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this title, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f) In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State: *Provided, however,* That no liability to the United States or State shall be imposed under subparagraph (C) of subsection (a), where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of subparagraph (C) of subsection (a) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(g) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section.

(h) The owner or operator of a vessel shall be liable in accordance with this section and section 311 of the Clean Water Act and as provided under section 114 of this Act notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff).

(i) No person (including the United States or any State) may recover under the authority of this section for any removal costs or damages resulting from the field application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or the costs of removal of such hazardous substance.

(j) Recovery by any person (including the United States or any State) for removal costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or the costs of removal of such hazardous substance. In addition, costs of removal incurred by the Federal Government in connection with a discharge specified in section 101(10) (B) or (C) shall be recoverable in an action brought under section 309(b) of the Clean Water Act.

(k)(1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act, shall be transferred to and assumed by the Post-closure Liability Fund established by section of this Act when—

(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act and regulations issued thereunder, which may affect the performance of such facility after closure; and

(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the

Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section    of this Act, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section    of this

Act may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

(4)(A) Not later than one year after the date of enactment of this Act, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in title II of this Act.

(B) Not later than eighteen months after the date of enactment of this Act and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this Act and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under title II of this Act.

(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.

### FINANCIAL RESPONSIBILITY

SEC. 108. (a)(1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, or $5,000,000, whichever is greater). Financial responsibility may be established by any one, or any combination, of the following: guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have certification furnished by the

President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b)(1) Beginning not earlier than five years after the date of enactment of this Act, the President shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after the date of enactment of the Act, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. To the maximum extent practicable, the President shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements.

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements over a period of not less than three and no more than six years after the date of promulgation. Where possible, the level of financial responsibility which the President believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The

evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(5) The minimum requirements for evidence of financial responsibility for motor carriers covered by this Act shall be determined under section 30 of the Motor Carrier Act of 1980, Public Law 96-296.

(c) Any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke any rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke any other defense that such guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

(d) Any guarantor acting in good faith against such claims under this Act are asserted as a guarantor shall be liable under section 107 or section 112(c) of this title only up to the monetary limits of the policy of insurance or indemnity contract such guarantor has undertaken or of the guaranty of other evidence of financial responsibility furnished under section 108 of this Act, and only to the extent that liability is not excluded by restrictive endorsement: *Provided,* That this subsection shall not alter the liability of any person under section 107 of this Act.

### PENALTY

SEC. 109. Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 108, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each day of violation.

### EMPLOYEE PROTECTION

SEC. 110. (a) No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person, who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this Act.

(c) Whenever an order is issued under this section to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) This section shall have no application to any employee who acting without discretion from his employer (or his agent) deliberately violates any requirement of this Act.

(e) The President shall conduct continuing evaluations of potential loss of shifts of employment which may result from the administration or enforcement of the provisions of this Act, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the President to conduct a full investigation of the matter and, at the request of any party, shall hold public hearings, require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and any alleged discharge, layoff, or other discrimination, and the detailed reasons or justification therefore. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the President shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the President or any State to modify or withdraw any action, standard, limitation, or any other requirement of this Act.

### USES OF FUND

SEC. 111. (a) The President shall use the money in the Fund for the following purposes:

(1) payment of governmental response costs incurred pursuant to section 104 of this title;

(2) payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however,* That such

costs must be approved under said plan and certified by the responsible Federal official;

(3) payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 112 of this title, including those costs set out in subsection 112(c)(3) of this title; and

(4) payment of costs specified under subsection (c) of this title.

The President shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this title.

(b) Claims asserted and compensable but unsatisfied under provisions of section 311 of the Clean Water Act, which are repealed or modified by section 304 of this Act may be asserted against the Fund under this title; and other claims resulting from a release or threat of release of a hazardous substance may be asserted against the Fund under this title for—

(1) all out-of-pocket medical expenses, including rehabilitation costs of burial expenses, due to personal injury;

(2) injury to, or destruction or loss of, natural resources, including cost for damage assessment: *Provided, however,* That any such claim may be asserted

only by the President, as trustee, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State;

(3) any claim for any capital loss or loss of income by an agricultural producer or processor due to destruction or loss of value of any livestock or livestock products, any poultry or eggs, any agricultural commodities (including grain, feed, or produce), or any orchard or cropland, forestland, rangeland, or pastureland taken out of production, where such destruction or loss of value results from condemnation or restriction on use determined by a public health agency to be necessary because of contamination resulting from a release of a hazardous substance, or where such destruction or injury results directly from a release of a hazardous substance, and such release occurs or has occurred after January 1, 1974; and

(4) any claim for an capital loss or loss of income by a harvester or processor of fish or seafood due to destruction or loss of value of any fishery stock, any harvested fish or seafood, or any fish or seafood product, where such destruction or loss of value results from condemnation or restriction on use determined by a public health agency to be necessary because of con-

tamination resulting from a release of a hazardous substance, or where such destruction or injury results directly from a release of a hazardous substance, and such release occurs or has occurred after January 1, 1978.

Payment of any claim for out-of-pocket medical expenses under this subsection shall be limited to those incurred from the time of initial exposure to a hazardous substance in a release, until six years following discovery of such exposure. Any such payment shall not exceed $30,000 to each such claimant, or such adjustment of such amount as the President shall annually establish, taking into account changes in the consumer price index. No claim shall be paid for out-of-pocket medical expenses except to the extent the injured party's medical expenses exceed $300. Payment of any claim for calculable direct lost wages or other personal income under paragraphs (3) or (4) of this subsection shall be limited to 100 per centum of the actual net amount lost in the first year following the commencement of such loss and 80 per centum of the actual amount lost in the second year following the commencement of such loss, and shall be payable only to a claimant for whom the gross income from activities adversely affected by the release of a hazardous substance exceeds 25 per centum of his total gross income from all sources for the average of the preceding three taxable years.

(c) Uses of the Fund under subsection (a) of this section include—

(1) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance;

(2) the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance;

(3) subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances;

(4) the costs of epidemiologic studies, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances are suffering from long-latency diseases;

(5) to the extent authorized by the President in his discretion, and not to exceed $10,000,000 per fiscal year, the reasonable costs of expert witnesses employed by claimants in actions to recover damages under section 107 of this Act, to the extent authorized by the court, and the costs of neutral expert panels which may be established in such actions by the court, sua sponte or on the motion of any party;

(6) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under the national contingency plan; and

(7) subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational

Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees.

(d)(1) No money in the Fund may be used under subsection (c)(1) and (2) of this section, nor for the payment of any claim under subsection (b)(2) of this section, where the injury, destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(2) No money in the Fund may be used for the payment of any claim for out-of-pocket medical expenses under subsection (b) of this section where the exposure of the claimant to a release of a hazardous substance has occurred wholly prior to January 1, 1977, and the claimant has discovered or has knowledge of his injury or disease prior to such date.

(3) No money in the fund may be used for the payment of any claim for out-of-pocket medical expenses under subsection (b)(1) of this section where such expenses are associated with disease or injury resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

(e)(1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President may, in his discretion, defer payment of all claims or of any class of claims, make partial payment on a prorated basis to each affected claimant, or provide for the payment of claims on a priority basis determined under regulation as to relative hardship to claimants.

(2) In any fiscal year, two-thirds of the money credited to the Fund under title II of this Act shall be available only for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section.

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities.

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

(f) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d) of this title.

(g) The owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice to all potential injured parties by publication or a notice in all local newspapers serving the affected area.

(h)(1) In accordance with regulations promulgated under section 301(c) of this Act, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this Act and section 311(f)(4) and (5) of the Federal Water Pollution Control Act, shall be assessed by (A) the Director of the Fish and Wildlife Service for living natural resources and their supporting ecosystems over which such Service has management or conservation authority, (B) the Administrator of the National Oceanic and Atmospheric Administration for other natural resources in marine ecosystems, and (C) the Administrator of the Environmental Protection Agency for all other natural resources. Such officials shall act for the President as trustee under this section and section 311(f)(5) of the Federal Water Pollution Control Act.

(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the

purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 107 of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

(i) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by, or appertaining to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.

(j) The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 107(k) of this Act, and, in addition, for payment of any claim or appropriate request for costs of removal, damages, or other compensation for injury or loss under section 107 of this Act or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.

(k) The Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. Each such Inspector General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. Each such Inspector General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.

### CLAIMS PROCEDURE

SEC. 112. (a) All claims which may be asserted against the Fund pursuant to section 111 of this title shall be presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107 of this title. In any case where the claim has not been satisfied within sixty days of presentation in accordance with this subsection, the claimant may elect to commence an action in court against such owner, operator, guarantor, or other person or to present the claim to the Fund for payment.

(b)(1)(A) The President shall prescribe appropriate forms and procedures for claims filed hereunder, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any person who knowingly gives or causes to be given any false information as a part of any such claim shall, upon conviction, be fined up to $5,000 or imprisoned for not more than one (1) year, or both.

(B) The President is authorized to designate geographic areas within which individuals, exposed to a hazardous substance in a release while in such area, may present claims to the Fund for payment for out-of-pocket medical expenses under section 111(b)(1) of this Act. In determining such areas, the President may consider the length of exposure, documented exposure, extent of migration, pathways of human exposure, and such other factors as the President deems necessary.

(2)(A) Upon receipt of any claim, the President shall as soon as practicable inform any known affected parties of the claim and shall attempt to promote and arrange a settlement between the claimant and any person who may be liable. If the claimant and alleged liable party or parties can agree upon a settlement, it shall be final and binding upon the parties thereto, who will be deemed to have waived all recourse against the Fund.

(B) Where a liable party is unknown or cannot be determined, the claimant and the President shall attempt to arrange settlement of any claim against the Fund. The President is authorized to award and make payment of such a settlement, subject to such proof and procedures as he may promulgate by regulation.

(C) Except as provided in subparagraph (D) of this paragraph, the President shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in implementing this subsection and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the President that advertising is not reasonably practicable. When the services of a State agency are used hereunder, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the President.

(D) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the President may use Federal personnel to implement this subsection.

(3) If no settlement is reached within forty-five days of filing of a claim through negotiation pursuant to this section, the President may, if he is satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim. If the claimant is dissatisfied with the award, he may appeal it in the manner provided for in subparagraph (G) of paragraph (4) of this subsection. If the President declines to make an award, he shall submit the claim for decision to a member of the Board of Arbitrators established pursuant to paragraph (4).

(4)(A) Prior to the effective date of this Act, the President shall establish a Board of Arbitrators to implement this subsection. The Board shall consist of as many members as the President may determine will be necessary to implement this subsection expeditiously, and he may increase or decrease the size of the Board at any time in his discretion in order to enable it to respond to the demands of such implementation. Each member of the Board shall be selected through utilization of the procedures of the American Arbitration Association: *Provided, however,* That no regular employee of the President or any of the Federal departments, administrations, or agencies to whom he delegated responsibilities under this Act shall act as a member of the Board.

(B) Hearings conducted hereunder shall be public and shall be held in such place as may be agreed upon by the parties thereto, or, in the absence of such agreement, in such place as the President determines, in his discretion, will be most convenient for the parties thereto.

(C) Hearings before a member of the Board shall be informal, and the rules of evidence prevailing in judicial proceedings need not be required. Each member of the Board shall have the power to administer oaths and to subpena the attendance and testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues presented to him for decision. Testimony may be taken by interrogatory or deposition. Each person appearing before a member of the Board shall have the right to counsel. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the President. If a person fails or refuses to obey a subpena, the President may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(D) In any proceeding before a member of the Board, the claimant shall bear the burden of proving his claim. Should a member of the Board determine that further investigations, monitoring, surveys, testing, or other information gathering would be useful and necessary in deciding the claim, he may request the President in writing to undertake such activities pursuant to section 104(b) of this title. The President shall dispose of such a request in his sole discretion, taking into account various competing demands and the availability of the technical and financial capacity to conduct such studies, monitoring, and investigations. Should the President decide to undertake the requested actions, all time requirements for the processing and deciding of claims hereunder shall be suspended until the President reports the results thereof to the member of the Board.

(E) All costs and expenses approved by the President attributable to the employment of any member of the Board shall be payable from the Fund, including fees and mileage expenses for witnesses summoned by such members on the same basis and to the same extent as if such witnesses were summoned before a district court of the United States.

(F) All decisions rendered by members of the Board shall be in writing, with notification to all appropriate parties, and shall be rendered within ninety days of submission of a claim to a member, unless all the parties to the claim agree in writing to an extension or unless the President extends the time limit pursuant to subparagraph (I) of this subsection.

(G) All decisions rendered by members of the Board shall be final, and any party to the proceeding may appeal such a decision within thirty days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the arbitral hearing took place. In any such appeal, the award or decision of the member of the Board shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of the member's discretion: *Provided, however,* That no such award or decision shall be admissible as evidence of any issue of fact or law in any proceeding brought under any other provision of this Act or under any other provision of law. Nor shall any prearbitral settlement reached pursuant to subsection (b)(2)(a) of this section be admissible as evidence in any such proceeding.

(H) Within twenty days of the expiration of the appeal period for any arbitral award or decision, or within twenty days of the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.

(I) If at any time the President determines that, because of a large number of claims arising from any incident or set of incidents, it is in the best interests of the parties concerned, he may extend the time for prearbitral negotiation or for rendering an arbitral decision pursuant to this subsection by a period not to exceed sixty days. He may also group such claims for submission to a member of the Board of Arbitrators.

(c)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation the rights of the claimant to recover those costs of removal or damages for which it has compensated the claimant from the person responsible or liable for such release.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs resulting from a release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal that the claimant has under this Act or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this title, and, without regard to any limitation of liability, all costs incurred by the Fund by reason of the claim, including interest, administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any

owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs for which compensation was paid.

(d)(1) No claim may be presented, nor may an action be commenced for damages under this title, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or the date of enactment of this Act, whichever is later: *Provided, however,* That the time limitations contained herein shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him.

(e) Regardless of any State statutory or common law to the contrary, no person who asserts a claim for damages against the Fund pursuant to this title shall be deemed or held to have waived any other claim for damages not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this title shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances.

### LITIGATION, JURISDICTION AND VENUE

SEC. 113. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Except as provided in subsection (a) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) The provisions of subsection (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by title II of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

(d) No provision of this Act shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

### RELATIONSHIP TO OTHER LAW

SEC. 114. (a) Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State.

(b) Any person who receives compensation for removal costs or damages pursuant to this Act shall be precluded from recovering compensation for the same removal costs or damages pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages as provided in this Act.

### AUTHORITY TO DELEGATE, ISSUE REGULATIONS

SEC. 115. The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this title.

## TITLE II

Reserved for Finance Committee action on Fund establishment, tax structure, and so forth.

## TITLE III—MISCELLANEOUS PROVISIONS

### REPORTS AND STUDIES

SEC. 301. (a) The President shall submit to the Congress, within four years after enactment of this Act, a comprehensive report on experience with the implementation of this Act, including, but not limited to—

(1) the extent to which the Act and Fund are effective in enabling Government to respond to and mitigate the effects of releases of hazardous substances;

(2) a summary of past receipts and disbursements from the Fund;

(3) a projection of any future funding needs remaining after the expiration of authority to collect taxes, and of the threat to public health, welfare, and the environment posed by the projected releases which create any such needs;

(4) the record and experience of the Fund in recovering Fund disbursements from liable parties;

(5) the record of State participation in the system of response, liability, and compensation established by this Act;

(6) the impact of the taxes imposed by title II of this Act on the Nation's balance of trade with other countries;

(7) an assessment of the feasibility and desirability of a schedule of taxes which would take into account one or more of the following: the likelihood of a release of a hazardous substance, the degree of hazard and risk of harm to public health, welfare, and the environment resulting from any such release, incentives to proper handling, recycling, incineration, and neutralization of hazardous wastes, and disincentives to improper or illegal handling or disposal of hazardous materials, administrative and reporting burdens on Government and industry, and the extent to which the tax burden falls on the substances and parties which create the problems addressed by this Act. In preparing the report, the President shall consult with appropriate Federal, State, and local agencies, affected industries and claimants, and such other interested parties as he may find useful. Based upon the analyses and consultation required by this subsection, the President shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this Act, including but not limited to recommendations concerning authoriza-

tion levels, taxes, State participation, liability and liability limits, and financial responsibility provisions.

(b) The President shall conduct a study to determine (1) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of vessels and facilities subject to liability under section 107 of this Act, and (2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, co-insurance provisions, and exclusions. The President shall submit the results of his study, together with his recommendations, within two years of the date of enactment of this Act, and shall submit an interim report on his study within one year of the date of enactment of this Act.

(c)(1) The President, acting through the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Environmental Protection Agency, and the Director of the Fish and Wildlife Service, shall study and, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act.

(2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

(d) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies and appropriate representatives of State and local governments and nongovernmental agencies, conduct a study and report to the Congress within two years of the date of enactment of this Act on the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. This study shall include—

(A) an assessment of current and projected treatment, storage, and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis:

(B) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate, or both, with similar hazardous waste management needs;

(C) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;

(D) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(E) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(F) an evaluation of the various options for overcoming obstacles to siting new facilities, including needed legislation for implementing the most suitable option or options.

(e)(1) In order to determine the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the release of hazardous substances into the environment, there shall be submitted to the Congress a study within twelve months of enactment of this Act.

(2) This study shall be conducted with the assistance of the American Bar Association, the American Law Institute, the Association of American Trial Lawyers, and the National Association of State Attorneys General with the President of each entity selecting three members from each organization to conduct the study. The study chairman and one reporter shall be elected from among the twelve members of the study group.

(3) As part of their review of the adequacy of existing common law and statutory remedies, the study group shall evaluate the following:

(A) the nature, adequacy, and availability of existing remedies under present law in compensating for harm to man from the release of hazardous substances;

(B) the nature of barriers to recovery (particularly with respect to burdens of going forward and of proof and relevancy) and the role such barriers play in the legal system;

(C) the scope of the evidentiary burdens placed on the plaintiff in proving harm from the release of hazardous substances, particularly in light of the scientific uncertainty over causation with respect to—

(i) carcinogens, mutagens, and teratogens, and

(ii) the human health effects of exposure to low doses of hazardous substances over long periods of time;

(D) the nature and adequacy of existing remedies under present law in providing compensation for damages to natural resources from the release of hazardous substances;

(E) the scope of liability under existing law and the consequences, particularly with respect to obtaining insurance, of any changes in such liability;

(F) barriers to recovery posed by existing statutes of limitations.

(4) The report shall be submitted to the Congress with appropriate recommendations. Such recommendations shall explicitly address—

(A) the need for revisions in existing statutory or common law, and

(B) whether such revisions should take the form of Federal statutes or the development of a model code which is recommended for adoption by the States.

(5) The Fund shall pay administrative expenses incurred for the study. No expenses shall be available to pay compensation, except expenses on a per diem basis for the one reporter, but in no case shall the total expenses of the study exceed $300,000.

(f) The President, acting through the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Administrator of the Occupational Safety and Health Administration, and the Director of the National Institute for Occupational Safety and Health shall study and, not later than two years after the enactment of this Act, shall modify the national contingency plan to provide for the protection of the health and safety of employees involved in response actions.

## EFFECTIVE DATES, SAVINGS PROVISION

SEC. 302. (a) All provisions of this Act shall be effective on the date of enactment of this Act.

(b) Any regulation issued pursuant to any provisions of section 311 of the Clean Water Act which is repealed or superseded by this Act and which is in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(c) Any regulation—

(1) respecting financial responsibility,

(2) issued pursuant to any provision of law repealed or superseded by this Act, and

(3) in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

### EXPIRATION, SUNSET PROVISION

SEC. 303. Unless reauthorized by the Congress, the authority to collect taxes conferred by this Act shall terminate on September 30, 1985.

### CONFORMING AMENDMENTS

SEC. 304. (a) Subsection (b) of section 504 of the Federal Water Pollution Control Act is hereby repealed.

(b) One-half of any sums appropriated prior to the enactment of this Act under subsection (k) of section 311 of the Federal Water Pollution Control Act and all sums appropriated under section 504(b) of the Federal Water Pollution Control Act shall be transferred to the Fund established under title II of this Act.

(c) In any case in which any provision of section 311 of the Federal Water Pollution Control Act is determined to be in conflict with any provisions of this Act, the provisions of this Act shall apply.

LEGISLATIVE VETO

SEC. 305. (a) Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of title I of this Act, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the                    dealing with the matter of            , which rule or regulation was transmitted to Congress on              .", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one

House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three

days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

### SEPARABILITY

SEC. 306. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this Act shall not be affected thereby.

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[From the Congressional Record, Aug. 25, 1980, pp. H7923-H7926]

## AMENDMENTS TO "SUPERFUND" BILLS

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. Ullman) is recognized for 5 minutes.

● Mr. **ULLMAN** * * *

[NOTE: For text of Mr. Ullman's statement see p. 339 of this volume.]

Mr. Speaker, I ask unanimous consent that the text of the committee substitute be printed in the RECORD and that the text of two committee amendments to the original Ways and Means amendments on H.R. 85 and H.R. 7020 also appear in the RECORD. The last two amendments relate to the taxation of feedstocks used as fuels **[Sec. 211]**.

### AMENDMENT TO THE WAYS AND MEANS COMMITTEE AMENDMENT TO H.R. 7020

Insert after section 4662(a)(2) of the Internal Revenue Code of 1954, as proposed by the Committee amendment, the following:

"(B) SPECIAL RULE FOR CERTAIN SUBSTANCES.—Under regulations prescribed by the Secretary, any substance listed in subparagraph (A) for which a principal use is use as a fuel shall be treated as a specified petrochemical feedstock only if it is used otherwise than as a fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer, thereof).●

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[From the Congressional Record, Aug. 27, 1980, p. H8040]

By Mr. **SOLOMON**: **[Sec. 221]**

—Page 36, line 21, after "for" insert "(1)".

Page 36, line 24, before the period insert: ", or (2) in the case of fiscal years beginning after September 30, 1981, assistance under section 3012 for the construction of State or regional hazardous waste facilities. Not more than 25 percent of the amount credited to the Fund for any such fiscal year may be used for purposes of providing assistance under section 3012".

Page 50, after line 11, insert the following:

(c) Subtitle C of the Solid Waste Disposal Act is amended by adding the following new section at the end thereof:

### "ASSISTANCE FOR STATE OR REGIONAL FACILITIES

"SEC. 3012. (a) GRANT AUTHORITY.—After September 30, 1981, the Administrator is authorized to make grants to any State or interstate agency for the construction of publicly owned facilities for the neutralization, incineration, or recycling of hazardous waste. No amount of any such grant may be used for the construction of any secure landfill or other facility for the storage of hazardous waste for periods in excess of one year.

"(b) FEDERAL SHARE.—The amount of any grant for any facility under this section shall not exceed 50 percent of the cost of such facility.

"(c) LIMITATIONS, REQUIREMENTS, AND CONDITIONS.—(1) Each applicant for assistance under this section shall submit to the Administrator for his approval such plans, specification, and estimates for the proposed facility as the Administrator deems necessary.

"(2) Before making any grant under this section, the Administrator shall determine that—

"(A) the proposed facility will meet the requirements of this subtitle; and

"(B) the applicant for such grant has made provisions satisfactory to the Administrator for assuring payment of the non-Federal share of the costs of such facility and for assuring proper and efficient operation.

"(d) ALLOTMENT.—Grants under this section shall be allotted annually by the Administrator among the applicants in accordance with regulations promulgated by him. Such regulations shall provide for the annual allocation of grants among States and regions in proportion to the relative amounts of hazardous waste generated in each such State and region during an appropriate prior annual period.".

Page 50, after line 15, insert:

**"Sec. 3012. Assistance for State or regional facilities.".**

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[From the Congressional Record, Sept. 4, 1980, pp. E4195-E4203]

## AMENDMENTS TO THE LIABILITY PORTIONS OF H.R. 7020, THE "SUPERFUND" BILL, ARE NEEDED

● Mr. GORE. Mr. Speaker, we will shortly be considering one of the most significant pieces of legislation introduced in this Congress, H.R. 7020, the "superfund" bill to clean up abandoned hazardous waste sites.

My colleagues on the Oversight and Investigations Subcommittee of the Interstate and Foreign Commerce Committee and I have conducted 18 hearings on the enormous problems associated with hazardous waste disposal, both in this Congress and in the 95th Congress. The case for remedial action has been made beyond any reasonable dispute. The legislation we will soon be debating is an effective response to the problem. It is a good bill, worthy of the enthusiastic support of every Member of this body. It is well thought out and accurately targeted on the problem it addresses. Nevertheless, it requires some improvement on the floor. Members will be called upon to choose between two versions of the superfund, one crafted in the Ways and Means Committee, the other crafted in my own Commerce Committee. I would like to take this opportunity to urge my colleagues in the strongest possible terms to choose the Ways and Means Committee's version of the superfund [Secs. 211 and 221]. The Commerce Committee's version is far too small to do the job and its insistence on a 50-50 split of the responsibility for the problem between the taxpayers and the industry which primarily caused the problem is unfair and inequitable. The $1.2 billion provided for in the Ways and Means version will allow us to make significant progress in cleaning up the worst of the abandoned dumpsites, and their division of responsibility—75-25—is far more equitable, although I would prefer to see even more responsibility assigned to the industry principally responsible for creating this problem.

Much will be said and written during the coming days about this impending debate. Before that debate begins, I would like to serve notice of three other amendments which I will be offering to the liability portions of H.R. 7020 [Sec. 107]. Although these portions of the bill have not attracted quite as much attention as the financing mechanism for the superfund, they are extremely significant, and must receive the closest possible scrutiny. I am extremely concerned about what I regard as serious deficiencies in these portions of the bill. It is for that reason that I will offer three amendments which I would like to describe in some detail. The first amendment

I will offer is to the so-called third party defense granted in section 3071(a)(1)(C). The second amendment I will offer is to the joint and several liability section, 3071(a)(1). The third amendment I will offer establishes a Federal cause of action for hazardous waste victims. With your indulgence, Mr. Speaker, I would like to discuss these three amendments one by one:

## THIRD PARTY DEFENSE UNDER H.R. 7020

As presently drafted, section 3071(a)(1)(C) of H.R. 7020 provides that a defendant can escape liability for a release, or threatened release of hazardous waste if he or she can demonstrate that such was:

> Caused solely by * * * an act or omission of a third party if the defendant establishes that he exercised "due care" with respect to the hazardous waste concerned, taking into consideration the characteristics of such hazardous waste.

This language alters the existing common law rules of: First, strict liability for abnormally dangerous/ultrahazardous activity, and second and alternatively, liability for inherently dangerous activity that would otherwise be applicable to parties dealing with hazardous waste.

## STRICT LIABILITY

### A. HAZARDOUS WASTE DISPOSAL IS ABNORMALLY DANGEROUS/ ULTRAHAZARDOUS ACTIVITY

There can be little doubt that actions involving hazardous waste would be considered by the courts as abnormally dangerous or ultrahazardous activity sufficient to subject a responsible party to strict liability. While there may be present no decision in which an individual has been held strictly liable to damages resulting from a release of hazardous waste, this is due to the "newness" of waste problems rather than a reticence on the part of the judiciary. The common law proceeds on the basis of analogy and by extrapolation of existing doctrine to new fact situations. Absence of case law on the specific issue of strict liability for hazardous waste in no way invalidates the conclusion of the doctrine's applicability.

Strict liability for abnormally dangerous/ultrahazardous activity originated with the historic case of *Rylands* v. *Fletcher,* 159 Eng. Rep. 737 (1865), rev'd L.R.1 Ex. 265, aff'd L.R.3 H.L. 330 (1868). In Rylands, the defendant was held liable without fault when a reservoir built on his land broke through the ground, and flooded an abandoned coal mine shaft. The water flowed along connecting passages and eventually flooded and damaged the adjoining mine of the plaintiff. In holding the defendant stictly liable, Lord Cairns, speaking for the House of Lords concluded:

> (I)t seems but reasonable and just that the neighbour who has brought something on his property (which was not naturally there), harmless to others so long as it is confined to his own property, but which he knows will be mischievious if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bringing it there, no mischief could have accrued, and it seems but just that he should at his peril keep it there, so that no mischief may accrue, or answer for the natural and anticipated consequence. LR.3 H.L. 330 at 338.

In the more than 100 years since Rylands the law of strict liability has progressed and expanded tremendously. Today, numerous activities have been held to constitute abnormally dangerous-ultrahazardous activities for which strict liability will be imposed. Most of these are far less dangerous than the handling, generation, and disposal of hazardous waste. Such activities include the handling and shipping of explosives, blasting, quarrying, handling of nuclear materials, aerial spraying of pesticides, fumigation, sonic booms, handling oxygen, testing rocket fuels, storage of natural gas in populated areas, the operation of a gasoline station so as to affect families' wells, pile driving, and transportation of hazardous chemicals. See Prosser, Law of Torts 512–16 (1971). Undoubtedly, as litigation involving hazardous waste develops, courts will add the generation and disposal of such wastes to the list of ultrahazardous activities. Indicative of this is the recent case of *New Jersey* v. *Ventron Corporation,* Nos. C-2996-75 and C-1110-78 (Superior Court of New Jersey, Chancery Division, Bergen County, Aug. 29, 1979), a case cited by the Justice Department in its correspondence and its testimony before the Committee on Ways and Means, in which a mercury processing operation was held strictly liable for damages caused by a release of mercury from its plant.

Section 520 of the Restatement (Second) of Torts sets forth six factors to consider in the classification of an activity as abnormally dangerous.

Note: "Ultrahazardous" activity was the term used in the first Restatement; the phrase "abnormally dangerous" is used by the Restatement (Second):

(a) existence of a high degree of risk of some harm to the person, land or chattels of others;
(b) likelihood that the harm that results from it will be great;
(c) inability to eliminate the risk by the exercise of reasonable care;
(d) extent to which the activity is not a matter of common usage;
(e) inappropriateness of the activity to the place where it is carried on; and
(f) extent to which its value to the community is outweighed by its dangerous attributes.

Not all these factors need be present before an activity can be said to be abnormally dangerous and strict liability imposed. Most, however, if not all of the factors are applicable to release of hazardous waste.

First, as has been demonstrated at Love Canal and elsewhere, release of hazardous waste obviously posed great harm and danger to a community. It does not matter that there may be only a slight possibility that a release might occur in a given area. As comment g to section 520 points out:

> If the potential harm is sufficiently great . . . the likelihood that it will take place may be comparatively slight and yet the activity be regarded as abnormally dangerous.

Second, releases of waste can occur despite the exercise of reasonable care. Certainly, a great deal of risk can be eliminated by the exercise of due care; however, strict liability will still attach because of the inherent potential of hazardous waste to cause harm despite proper precautions. As comment h explains:

> There is probably no activity . . . from which all risks of harm could not be eliminated by the taking of all conceivable precautions, and the exercise of utmost care, particularly as to the place where it is carried on . . . It is not necessary, for the factor stated in Clause (c) to apply, that the risk be one that no conceivable precau-

tions or care could eliminate. What is referred to here is the unavoidable risk remaining in the activity, even though the actor has taken all reasonable precautions in advance and has exercised all reasonable care in his operation, so that he is not negligent.

Additionally, most activities that could result in a release of hazardous waste are not "customarily carried on by the great mass of mankind or by many people in the community" and so cannot be said to be a matter of common usage. See comment i, section 520. Appropriateness of the activity to its surrounding and value to the community, moreover, will usually excuse only those activities that, while dangerous, can be carried on only in a particular area and/or support the economic well-being of a community to an extraordinary degree. See comments j and k, section 520. Given the above, it is inconceivable that actions involving hazardous waste would not be considered abnormally dangerous. Strict liability would thus be imposed upon anyone responsible for a release of such waste.

### B. THE IMPACT OF § 3071(a)(1)(C)

To understand the impact of the third party defense provided by H.R. 7020, it is important to keep in mind the policy underlying the doctrine of strict liability. Certain activities carry with them the inherent possibility of harm to others and so, as outlined above, are deemed abnormally dangerous, or ultrahazardous, activities. Society makes a basic policy decision, however that despite the inherent danger, these activities are needed and so they are permitted to occur. Were it not for this value determination, the activities would be considered too dangerous to allow, and anyone engaged in any of the activities would be guilty of negligence. In other words, the activity is felt to be of such utility that the risk which is involved in it cannot be regarded as so great or so unreasonable as to make it negligence merely to carry on the activity at all. See comment b, section 520, Restatement (Second) of Torts. Consequently, because of the social utility of their manufactured products, generators of harzardous wastes are not considered negligent simply because they are enagaged in their business.

Having decided to permit the abnormally dangerous activity, however, society imposes certain obligations on those individuals engaged in such activities. Fundamentally, an abnormally dangerous activity must pay for itself. The activity may be carried on, but if an innocent party is injured, he must be compensated regardless of whether the defendant was at fault. As Justice Stewart explained in dissent in *Laird* v. *Nelms,* 406 U.S. 797 (1972), (which involved the Federal Torts Claim Act and is factually inapposite to the concerns here):

> The law . . . imposes liability for harm caused by certain narrowly limited activities even though those activities are not prohibited and even though the actor may have exercised the utmost care. Such conduct is "tortious" not because the actor is necessarily blameworthly, but because society has made a judgment that while the conduct is so socially valuable that it should not be prohibited, it nevertheless carries such a high risk of harm to others, even in the absence of negligence, that one who engages in it should make good any harm caused to others thereby, 406 U.S. at 805 (Stewart, J., dissenting).

Thus, while the generation and disposal of hazardous waste are deemed a necessary evil in our society, "the unavoidable risk of harm that is inherent in (handling waste) requires that it be carried on at (the defendant's) peril, rather than at the expense of the innocent person who suffers harm as a result of it." Restatement (Second) section 520, comment h. In accordance with the foregoing, section 520(1) of the Restatement (Second) of Torts provides:

> One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land, or chattels of another resulting from the activity, *although he has exercised the utmost care to prevent the harm.* (Emphasis added.)

As comment d to section 520 relates, the defendant's liability is not based on any negligence:

> Either in attempting to carry on the activity itself in the first instance, or in the manner in which it is carried on. The defendant is held liable although he has exercised the utmost care to prevent the harm to the plaintiff that has ensued. The liability arises out of the abnormal danger of the activity itself, and the risk that it creates, of harm to those in the vicinity. It is founded upon a policy of the law that imposes upon anyone who for his own purposes creates an abnormal risk of harm to his neighbors the responsibility of relieving against that harm when it does in fact occur.

The defendant, then, is basically an insurer against the consequences of his abnormally dangerous conduct. As Prosser stated, "He is liable although he has taken every possible precaution to prevent the harm and is not at fault in any moral or social sense." Prosser, supra, at 517.

The effect of section 3071(a)(1)(C) is thus readily apparent. By enabling a defendant to escape liability by a showing of due care, H.R. 7020 erects a negligence standard where one of strict liability would otherwise apply. As shown above, under the common law, negligence is irrelevant to a finding of liability for abnormally dangerous/ultrahazardous activity. H.R. 7020 changes this common law rule. Under section 3071(a)(1)(C), a defendant can avoid liability, despite being engaged in ultrahazardous activity, by contracting with a third party to dispose of the hazardous waste. As long as the defendant can sustain his/her burden of proof regarding the exercise of due care in selecting a transporter or disposer, the defendant cannot be held liable and no recovery can be had from him/her. Although it couches its language in terms of "new" duties imposed on a defendant, the Commerce Committee Report is quite open as to the effect of section 3071(a)(1)(C):

> With respect to the third party defense, a defendant is also required to establish that he exercised due care with respect to the hazardous waste concerned, taking into consideration the characteristics of such waste. The defendant must show that he exercised due care with respect to all reasonable foreseeable acts or omissions of a third party. For instance, in the case of a defendant generator, shipper, transporter, or disposer, the defendant must demonstrate that he exercised due care in the selection and instruction of a responsible contractor or other independent party engaged by such defendant for the transportation, storage, treatment, or disposal of the waste, provided adequate information as to the identity, quantity, composition, condition and characteristics of the waste to such person, and took reasonable measures to assure or verify that such person properly carried out the activities for which he was engaged. Such defendant must also demonstrate that he properly labeled, loaded, and packaged the waste and properly equipped and maintained the container or facility used for the transportation, storage, treatment, or disposal of the waste. In general, the Committee intends that for a defendant to establish that he exercised due care, the defendant must demonstrate that he took all precautions with respect to the particular waste that a similarly situated reasonable and pru-

dent person would have taken in light of all relevant facts and circumstances. *Commerce Committee Report* at 34.

While a defendant must thus show that he took a number of precautions and acted with due care in order to escape liability, the basic problem still remains. Under the common law, the defendant could not escape liability even if he did take every precaution. H.R. 7020, then, effectively destroys a rule that has been in effect for over 100 years.

In addition to interposing the negligence barrier between the plaintiff and defendant, the defense provided in section 3071(a)(1)(C) flies in the face of section 522 of the Restatement (Second) of Torts. That section provides:

> One carrying on an abnormally dangerous activity is subject to strict liability for the resulting harm although it is caused by the unexpectable
> (a) act, negligent or reckless conduct of a third person * * *

As the comment to section 522 explains, the abnormally dangerous nature of an activity is the basis for the defendant's liability when the activity results in damage or injury. Just as the negligence of the defendant is irrelevant when the activity is considered abnormally dangerous, acts by a third party cannot affect liability under the common law. It is the activity itself, not an individual's conduct, that determines the liability.

## INHERENTLY DANGEROUS ACTIVITY

Related to the doctrine of strict liability is the rule that holds a defendant liable for injuries resulting from inherently dangerous activity even though he/she contracted with a third party for the performance of that activity. This is basically a rule of vicarious liability, whereby the employer is held liable for the negligence of the independent contractor, regardless of whether the employer himself has been at fault. As with strict liability, policy reasons dictate that the employer not be permitted to shift responsibility to the contractor. The difference between the liability here and that for abnormally dangerous activity appears to be that the defendant here has himself actually been engaged in no activity; the contractor performs all the work. This rule seems more applicable to situations involving middlemen—if such are used—in hazardous waste disposal that to the generators of waste.

Under the rule here, it does not matter that the defendant exercised due care in his selection or instructions to the contractor. The inherently dangerous nature of the activity to be performed provides the grounds for liability. As section 416 of the Restatement (Second) of Torts provides:

> One who employs an independent contractor to do work which the employer should recognize as likely to create during its progress a peculiar risk of physical harm to others unless special precautions are taken, is subject to liability for physical harm caused to them by the failure of the contractor to exercise reasonable care to take such precautions even though the employer has provided for such precautions in the contract or otherwise.

Under section 416 the employer remains liable for injuries resulting from dangers that he should contemplate at the time that he enters into the contract; he cannot shift to the contractor the responsibility for such dangers or for taking precautions against them. The employer will remain liable even if the contract contains express stipulations for the taking of adequate precautions and even if the contractor agrees to assume all liability for harm caused by his failure to take such precautions.

Clearly, by enabling a defendant to exonerate himself by demonstrating due care, H.R. 7020 abrogates this common law rule as well. Section 3071(a)(1)(C) enables—indeed encourages—a defendant to contract out disposal of hazardous wastes and thereby contract away liability. Because of the inherently dangerous nature of the work performed, the negligence of the contracting party is irrelevant to liability under the common law. H.R. 7020, however, alters the rule to provide a defense where, for sound policy reasons, one heretofore has not existed.

Although I would have preferred the deletion of any third party defense, after consultation with Chairman Florio, I have decided to offer a compromise. My amendment strikes a middle ground between the path followed under common law and the process currently envisioned under H.R. 7020. My amendment would restrict the application of the third party defense to situations where the third party is not an employee or agent of the defendant, or where the third party's act or omission does not occur in connection with a contractual relationship, direct or indirect, with the defendant. My amendment would further restrict the application of the third party defense to situations in which the third party has acted negligently.

Finally, I would clarify the requirement that the defendant exercised due care by defining that term directly in the statute. The definition is taken from the committee's report. I feel that a statutorily defined term is critical to assure that there is no ambiguity over what we mean by due care, and therefore everyone—defendants, prosecutors, judges and juries, and anyone else who traffics in hazardous wastes—will know what are the rules of the game.

These changes are more in accord with the common law relating to abnormally dangerous activities and they promote incentives for generators, handlers, and disposers of hazardous waste to eliminate as many of the hazards as possible that accompany the presence of such wastes. My amendment will encourage greater cooperation in discovery and cleanup of waste disposal sites, as an alternative to this liability provision—remembering that Government cleanup is a last resort where those responsible cannot or will not take appropriate actions.

The amendment will cultivate responsible hazardous waste disposal and it will encourage industry to ferret out and exclude those parties who have a poor waste disposal track record. In addition, this closer adherence to a true strict liability format greatly improves the prospects of recovering public funds used for emergency response efforts.

The text of my first amendment follows:

Page 47, line 17 strike out "an" and insert in lieu thereof "a negligent"

Page 47, line 17 after "party" insert: "other than an employee or agent of the defendant, or than one whose action or omission occurs in connection with a contract relationship, existing directly or indirectly, with the defendant,"

Page 48, after line 4 insert the following new paragraph, renumbering as appropriate.

(2) For purposes of subparagraph (1)(C) a defendant (including a generator, transporter, shipper, or disposer) must demonstrate that he exercised due care with respect to all foreseeable acts or omissions of any third party and that he exercised due care in light of all relevant facts and circumstances, including:

(A) exercised due care in the selection and instruction of a responsible person engaged by such defendant for the transportation, storage, treatment or disposal of said hazardous waste;

(B) provided adequate information as to the identity, quality, composition, condition, characteristics and potential hazard of the waste to such person;

(C) took reasonable measures to assure and verify that such person properly carried out the activities for which he was engaged;

(D) properly labeled, loaded and packaged the waste and properly equipped and maintained the container or facility used for the transportation, storage, treatment, or disposal of the waste, and

## JOINT AND SEVERAL LIABILITY UNDER H.R. 7020

Although section 3071(a)(1) of H.R. 7020 proclaims that the liability of any party found to have caused or contributed to a release of hazardous waste shall be joint and several with any other such person, exceptions created by the bill effectively render that term meaningless here. Joint and several liability ordinarily would mean that whenever a single, indivisible harm is sustained as a result of independent, separate, but concurring tortious acts by two or more actors, each can be held liable for the entire amount of damages incurred. See Harper and James, 1 Law of Torts 693 (1956). The defendants in such a case would be jointly liable in that collectively they would be responsible for any damage caused; they would also be severally liable in that each is individually liable for the full amount of damage. The plaintiff could collect the total sum of damages awarded from a single defendant and could avoid the agony of multiple suits against the defendants that would otherwise be necessary to achieve full compensation. See Prosser, Law of Torts 315-17 (1971). Under the theory of contribution, the defendant from whom the plaintiff receives payment may then collect from the other defendants for that part of the damages for which each is responsible. Prosser, supra, at 505-10. Under the theory of satisfaction, the plaintiff, once he receives from one or more defendants an amount equal to the judgment awarded, cannot collect more than that sum. Prosser, supra, at 299-301.

## JOINT AND SEVERAL LIABILITY GENERALLY

Originally, courts were reluctant to impose joint and several liability on defendants in cases wherein the injury suffered was considered indivisible. Because contribution was not formerly allowed among defendants, courts were reluctant to place the full burden of liability on any one defendant. On the other hand, because the injury was indivisible, the plaintiff had difficulty establishing the respective responsibility of each defendant for portions of the harm. Consequently, courts often denied recovery.

Eventually, as States enacted statutes providing for contribution among defendants, courts became more accepting of joint and several liability and permitted plaintiffs to recover the full amount of damages from a single defendant. The courts concluded that because the defendants were the ones at fault, it would be unfair to place the burden of demonstrating the apportionability of the damage on the plaintiff. The burden was thus placed on the defendants to work out for themselves who was responsible for what part of the injury under the process of contribution. The plaintiff would be allowed to recover his judgment, and the paying defendant would now be reimbursed under one of the new statutes for that portion of the payment for which he was not responsible. Joint and several liability gained its greatest acceptance early in cases involving multiple simultaneous or successive automobile collisions when a single plaintiff was injured by the acts of several negligent drivers.

### DIVISIBILITY OF HARM

As stated, the indivisibility of the harm suffered is the key to a ruling of joint and several liability. The harm must be of such a nature that it is not practicably apportionable, for where some reasonable means of apportioning the damages is evident, the courts will generally not hold the tortfeasors jointly and severally liable. See Harper & James, 1 Law of Torts 693-94 (1956). Prosser explained that:

> (t)he question is primarily not one of the fact of causation, but of the feasibility and practical convenience of splitting up the total harm into separate parts which may be attributed to each of two or more causes. Where a logical basis can be found for some rought apportionment, which limits a defendant's liability to that part of the harm which he in fact has caused, it may be expected that the division will be made.

Prosser, supra, at 313-14. Section 433A of the Restatement (Second) of Torts concurs in this analysis. That section provides:

> (1) Damages for harm are to be apportioned among two or more causes where (a) there are distinct harms, or (b) there is a reasonable basis for determining the contribution of each cause to a single harm.
>
> (2) Damages for any other harm cannot be apportioned among two or more causes.

Subsection (1)(b) embodies the specific rule that joint and several liability does not apply where the injury is divisible.

Subsection (2) of section 433A represents the flip side of subsection (1)(b)—namely that joint and several liability is appropriate where the harm cannot be practicably apportioned. As Prosser noted:

> Certain results, by their very nature, are obviously incapable of any logical, reasonable, or practical division. . . . No ingenuity can suggest anything more than a purely arbitrary apportionment of such harm. Where two or more causes combine to produce a single result, incapable of any logical division, each may be a substantial factor in bringing about the loss, and if so, each must be charged with all of it. Prosser, supra, at 315.

Basically, the joint and several liability is possible whenever an injury is indivisible. The trick is to determine when an injury can in fact be considered indivisible and thereby permit employment of joint and several liability. This requisite indivisibility can be of two sorts. First, the injury can be the type that is not even theoretically divisible. Damages of this nature are such things as death or the total destruction of one's property or chattel. Most personal injury suits present damages like these. Alternatively, however, the harm can be such that, although theoretically divisible, it is indivisible in a practical sense insofar as the plaintiff's ability to apportion it among the wrongdoers in concerned. Pollution by multiple defendants would usually fall within this classification.

Courts uniformly will permit entire recovery from any or all defendants under the first type of indivisibility. There is conflict, however, regarding the second situation. As stated earlier, where there has been some rational basis for apportioning damages, courts in the past in pollution cases have denied joint and several liability. There is a growing body of case law, however, that holds that a plaintiff's right to recover for his harm should not depend on his ability to apportion the damage; instead, apportionment is seen as a problem properly left to the defendants themselves. See Harper & James, supra, 701–02.

Along these lines, most pollution cases pose a special problem regarding the indivisible injury issue. Because the overall, and allegedly indivisible, harm is caused by a series of independent, concurrent tortfeasors, it is usually the case that some damages would have been done even had some of the defendants not contributed; the damage would not be as great, however, as that actually sustained. In other words, each polluter has contributed to produce some but not all of the harm. This is the sort of injury that most earlier cases held to be at least theoretically divisible and which therefore mandated apportionment of liability. For sound policy reasons, however, courts have begun to view pollution by multiple defendants as a form of indivisible harm by examining the problems from the plaintiff's perspective. Joint and several liability has thus been frequently imposed. As Harper and James related:

> These cases emphasize that the burden of apportioning damages, if possible, more properly should be placed on the multiple defendants who have been sued for injuries resulting from their independent, concurring—although not necessarily simultaneous—(actions) under circumstances in which it is not alleged that any one defendant was responsible for the entire injury or any specified part of it. (Harper & James, supra, at 708.)

For example, in *Landers* v. *East Texas Salt Water Disposal Company,* 151 Tex. 251, 248 S.W. 2d 731 (1952), the plaintiff sued a salt water disposal company and an oil company jointly and severally for damages caused when they independently dumped salt water in his lake. Assuming that neither defendant alone would have caused the entire damages, the court nevertheless decreed that the defendants should be held jointly and severally liable. As the court concluded:

> Where the tortious acts of two or more wrongdoers join to produce an indivisible injury, that is, an injury which cannot be apportioned with reasonable certainty to the individual wrongdoers, all of the wrongdoers will be held jointly and severally liable for the entire damages and the injured party may proceed to judgment against any one separately or against all in one suit. (151 Tex. at 256, 248 S.W. 2d at 734).

Although the court also provided that a defendant could reduce his liability by demonstrating the amount of damage caused by his acts only, or that caused by other defendants, the effect of the decision was to require the defendants, rather than the plaintiff, to show that other tortfeasors contributed to the harm and in what quantities they so contributed. This incentive to locate all other responsible parties is one of the prime considerations underlying use of joint and several liability in pollution suits. In fact, in addition to shifting the burden of proving the cause of plaintiff's injury, the court placed on the sued defendants ultimate responsibility for bringing any other defendants into the suit as codefendants. Facing the prospect of either proving that other parties were also responsible for the injury or paying the full judgment themselves, defendants would henceforth have incentive to insure that no parties have been inadvertenly omitted from the suit. As the court in Landers stated:

> If fewer than the whole number of wrongdoers are joined as defendants to plaintiff's suit, those joined may by proper cross action under the governing rules bring in those omitted.

Thus, any responsible parties not named as defendants initially by the plaintiff would be located by the named defendants and included by cross-claim.

The emerging rule of joint and several liability in pollution cases was also noted in *Phillips Petroleum Company* v. *Hardee,* 189 F. 2d 205 (5th Cir. 1951). In that case, a number of rice farmers sued several oil companies for damages to their crops caused by oil pollution of their irrigation water. As in Landers, each defendant's pollution alone was insufficient to cause the whole damage. Nevertheless, the court stated that:

> Where persons acting independently are guilty of negligence, and the results of their negligence combine to set up a chain of causation resulting in the complained of damage, these persons, though not acting in concert, are yet joint tortfeasors and as such, are liable for the damage caused by the conjunction of their separate negligence.

That the defendants bear the burden of proving the apportionability of harm in the new wave of pollution decisions was demonstrated well by the leading case of *Michie* v. *Great Lakes Steel Division,* 495 F. 2d 213 (6th Cir., 1974). In Michie, 37 residents of Ontario, Canada, brought suit against three Michigan corporations for damages caused by pollution emitted by the defendants into the ambient air. Rejecting the old Michigan rule denying joint and several liability in pollution cases, the sixth circuit reasoned that, in any claim for relief, there is a manifest unfairness in "putting on the injured party the impossible burden of proving the specific shares of harm done by each (defendant)." 495 F. 2d at 216. As a result, the court placed on the defendants the burden of proving "which one was responsible and to what degree" for the plaintiffs' injuries.

As one commentator has noted, after Michie a defendant cannot now escape liability merely by proving that other parties contributed to the injury in such a way as to make apportionment impracticable. See Comment, 1974 Utah L. Rev. 603, 607. The court essentially analyzed the issue as a contest between the rights of individuals and the rights and duties of industry. In the end, the court concluded that the rights of the injured party were superior.

The Michie case thus stands for the proposition that if a plaintiff in a pollution suit can show a causal connection between the defendants' acts and the plaintiff's injury, as well as the violation of some duty owed by the defendants to the plaintiff (where there is no ultrahazardous material involved) the burden of proof will shift to the defendants to demonstrate which defendant is responsible for what portion of the injury. The rule espoused in Michie is similar to that presented in section 433B of the Restatement (Second) of Torts, which provides:

> (2) Where the tortious conduct of two or more actors has combined to bring about harm to the plaintiff, and one or more of the actors seeks to limit his liability on the ground that the harm is capable of apportionment among them, the burden of proof as to the apportionment is upon each such actor.

Basically, as both Prosser and the Michie court noted, if apportionability cannot be demonstrated, the acts of each defendant could then be considered a substantial factor in the plaintiff's injury, and each would be liable for the full amount of damages. Contribution among the defendants, however, would prevent one defendant from absorbing the entire loss.

## IMPACT OF H.R. 7020

While the essence of joint and several liability is that multiple defendants are each liable for the full amount of damages unless the feasibility of apportionment can be demonstrated by the defendants, sections 3071(a)(2) (A), (B), and (C) effectively foreclosed the possibility that any defendant will be held fully liable. Particularly, subsections 2 (B) and (C) emasculate the effect of the indivisible injury rule by providing that a court shall apportion liability even when the defendants have not established that such is feasible or warranted.

Subsection (2)(A) appears to reflect the procedure utilized by most courts in approaching joint and several liability. That section sets up a process by which a defendant may demonstrate by a preponderance of the evidence that he is responsible for only a certain portion of the damage done. If the defendant is successful in proving the limited extent of his responsibility the injury is considered apportionable to that extent and that particular defendant's liability is limited. The remaining amount of the damages would then be imposed on the remaining defendants.

Ordinarily, if the remaining defendants could not establish their respective liability for the damages left after the section (2)(A) apportionment is subtracted, each would be fully liable for the remaining damages. Subsection (2)(B) changes this rule, however. That section provides that even if the defendants do not establish the apportionability of the remaining damages, the court shall itself apportion the liability. Subsection (2)(C) goes on to provide that once this apportionment has been made by the court, no defendant shall be liable for more than his apportioned share. The effect is that no one defendant can ever be held responsible for the full amount of the damages and the fund will sometimes be used to pay for damages when responsible parties can be identified. Thus, there actually is no joint and several liability at all in H.R. 7020.

One obvious problem with the apportionment system erected by H.R. 7020 is that a plaintiff—the Government under the present bill—would be forced to seek payment from each of the defendants based on the amount designated by the court as that which he owes. Under a scheme of joint and several liability, where the defendants cannot themselves establish their respective liabilities, each is responsible for the full amount, and the plaintiff may collect that full sum from any one of them. The paying defendant would then have the right to go against the other "nonapportioned" defendants for contribution; the defendants would bear the burden of deciding who would pay how much to whom among them. The theory behind enabling the plaintiff to collect fully from one defendant is essentially that as wrongdoers, the defendants each bear the burden of proving that he is not liable for the full extent of the damage caused. If the defendant cannot meet this burden and show that he is not fully responsible, then he is fully liable. H.R. 7020 clearly abrogates this theory.

### THE ONE-BARREL DUMPER

One concern expressed about imposing joint and several liability for cleanup of hazardous waste sites is that a one-barrel dumper may be held liable for millions of dollars in damages. Such concern is completely unfounded, for if such one-barrel dumpers actually exist, they are protected from full liability by the present common law procedures.

For a defendant to be held liable for full damages under joint and several liability, not only must the nature of the harm be incapable of apportionment, but the particular defendant's actions must also have been a substantial factor in bringing about the damage.

There is no single standard for what constitutes a substantial factor. That determination is a question of fact to be determined by the trier of fact at trial. As Prosser explained:

> Whether (a defendant's conduct) is a * * * substantial factor is for the jury to determine, unless the issue is so clear that reasonable men could not differ. It has been considered that "substantial factor" is a phrase sufficiently intelligible to the layman to furnish an adequate guide in instructions to the jury, and that it is neither possible nor desirable to reduce it to any lower term.

Prosser, supra, at 240. The case of the one-barrel dumper is perhaps most analogous to the situation in which an individual tosses a lighted match into an already flaming forest fire. It can hardly be contended that the individual's act was a substantial factor in bringing about any harm caused by the spread of the fire. This is not to say, however, that there would never be an occasion to hold a small dumper fully liable. For example, the particular barrel that that individual dumped could have been improperly sealed, allowing its contents to spill and corrode the other containers at the site; or the barrel might contain a particularly hazardous and dangerous substance.

Paragraph (2)(B) of section 3071 in H.R. 7020 establishes a perverse incentive system for those who have caused or contributed to hazardous waste incidents. It encourages all defendants, except for those who are insignificant contributors, to ignore the burden of proof requirements of paragraph (A) and to cast their lot with any other defendants under the mandated apportionment formula of (2)(B). Hence, a major contributor would seek to establish the culpability of other defendants—although he would not quantify the harm contributed by each—to enlarge the pool of liable parties thereby reducing each defendant's cost obligations. Consequently, the defendant can shift the burden of proof responsibility onto the plaintiff to demonstrate to the maximum extent practicable what each party has contributed to the damages.

Paragraph (2)(B) should be removed from the liability provision to allow a court to proceed under a true joint and several liability scheme. I reluctantly relaxed my efforts to completely delete this misguided subsection and in a spirit of compromise, I am instead offering an amendment to help ease its adverse effects.

My proposal would affirm the court's authority to apportion the remaining costs under (2)(B), but would not require such apportionment. The language would permit the court to apportion the remaining damages among the remaining defendants, taking into account certain equitable factors. Apportionment would be solely at the discretion of the court.

The text of this amendment follows:

Page 48, line 6, after "establishes" insert "by a preponderance of the evidence"
Page 48, line 11 after "establishes" insert "by a preponderance of the evidence"
Page 48, strike out lines 16 through 20 and insert in lieu thereof:

"(B) To the extent apportionment is not established under subparagraph (A), the court may apportion the remaining costs among the parties if the court deems such apportionment appropriate. In apportioning liability under this subparagraph, the court may consider factors, including:

(i) the ability of the party to demonstrate that his contribution to a discharge, release, or disposal of a hazardous substance can be distinguished;

(ii) the amount of hazardous substance involved;

(iii) the degree of toxicity of the hazardous substance involved;

(iv) the degree of involvement in the manufacture, treating, transporting, disposing of the hazardous substance; and

(v) the degree of cooperation with Federal, State, or local officials to prevent any harm to the public health or the environment."

Page 48, line 21 strike "this paragraph" and insert "subparagraph (A)"

## FEDERAL CAUSE OF ACTION FOR HAZARDOUS WASTE VICTIMS—ARGUMENTS FAVORING A FEDERAL CAUSE OF ACTION

Mr. Speaker, there are many reasons for granting private parties the right to sue in Federal court for injuries caused by hazardous waste:

(1) Statute of limitations problems faced by plaintiffs in State courts;

(2) Strict proof of causation requirements in State courts;

(3) The need for uniformity in the law regarding liability for waste-caused injuries; and

(4) Greater acceptance by Federal courts of prevailing legal theories of recovery for such injuries.

All of these considerations are valid and forceful reasons for providing a Federal forum via the "superfund" legislation.

## STATUTE OF LIMITATIONS PROBLEMS

This is possibly the best argument in favor of creating a Federal cause of action. A number of States have restrictive statutes of limitations that effectively preclude any plaintiff injured by exposure to hazardous wastes from bringing suit. A Federal cause of action is needed to enable injured parties to overcome what, in this situation, amounts to an arbitrary and unreasonable barrier to recovery.

In the majority of States the statute of limitations for personal injury suits begins to run at the time at which the plaintiff discovers or should have discovered his injury. This is known as the time of discovery rule. In the remaining States, however, the statute of limitations begins to run immediately upon the plaintiff's exposure to the toxic or hazardous substance(s). This time of exposure rule reflects the older, traditional, but now minority rule in tort law.

The problems that the time-of-exposure rule pose for a prospective plaintiff are readily apparent. Physical symptoms resulting from exposure to hazardous substances often are not manifest until several years after the initial contact. In many cases the physical effects do not appear until as long as 15 to 20 years after first exposure. Because depending on the State, statutes of limitations range from 2 to 6 years, plaintiffs who do not experience physical symptoms until after this period are blocked from bringing suit where the time of exposure rule is in effect.

All States agree that the statute of limitations should begin to run from the date of the party's injury. The point of disagreement among the jurisdictions is defining when the injury occurred. Those States that have adopted the time-of-discovery rule have chosen to designate the real injury as occurring at the time of some actual manifestation of physical harm; the statute runs, in other words, from the time at which the injury was discovered or should reasonably have been discovered. States employing the time-of-exposure rule take a strict and literal view of the time of injury. A few States, not wishing to accept either interpretation, have adopted a continuing injury theory. Under this approach, a new injury to the aggrieved party is said to occur each day there is exposure to the hazardous substance. This theory removes the statute of limitations problem for a citizen living near a waste site who does not discover his/her injury until several years after his initial exposure; it does not, however, help an individual who moved away from a site area and whose exposure to the substances ended beyond the limiting period. A Federal cause of action is thus needed to provide a forum for injured parties whose claims are precluded by either the time-of-exposure or continuing injury theories.

The most striking example of a State employing the time-of-exposure rule is New York. Three major cases have contributed to this approach on the part of the New York judiciary. The leading case is *Schmidt* v. *Merchants Dispatch Transportation Company,* 270 N.Y. 287, 200 N.E. 824 (1936), in which a victim of occupationally induced pneumoconiosis was denied access to the courts because he filed suit more than three years after terminating his employment with the defendant. Despite the fact that the plaintiff's injury was not diagnosed until after leaving employment, the court ruled that his cause of action had accrued at the point of initial inhalation. Although the court recognized the inequity of its decision, it declared:

> The statute of limitations is a statute of repose. At times, it may bar the assertion of a just claim. Then its application causes hardship. The Legislature has found that such occasional hardship is outweighed by the advantage of outlawing stale claims. 200 N.E. at 827-28.

Schmidt set the tone for subsequent decisions by the New York courts. In *Schwartz* v. *Heyden Newport Chemical Corporation,* 12 N.Y. 2d 212, 237 N.Y.S. 2d 714, 188 N.E. 2d 142, amended, 239 N.Y.S. 2d 896, 190 N.E. 2d 253, cert. denied, 374 U.S. 808 (1963), plaintiff filed suit in 1959 for loss of an eye in 1957 due to a carcinoma that had been produced by a drug administered to the plaintiff in 1944. The court dismissed the claim, stating that under Schmidt the plaintiff's cause of action accrued in 1944. Again accepting the inequity of its decision, the court stated:

> Considering the function of a statute of limitations as a device for repose, a potential defendant's equities are the same whether the plaintiff knows of his condition or not. Repose is as beneficial to society in the one case as in the other * * *. It is hard to say for certian, but perhaps the possibility of feigned cases against unprepared defendants and the difficulties of proof in meritorious cases led to a decision that society is best served by complete repose after certain number of years even at the sacrifice of a few unfortunate cases. 237 N.Y.S. 2d at 718-19.

Finally, last year the New York court reaffirmed Schwartz and Schmidt in *Thornton* v. *Roosevelt Hospital,* 47 N.Y. 2d 780, 417 N.Y.S. 2d 920, 391 N.E. 2d 1002 (1979), in which the plaintiff had been administered a drug through injection that produced cancer in 1972. The Court barred the plaintiff's suit declaring:

> It is well established in this State that when chemical compounds are injected into a person's body, the injury occurs upon the drug's introduction, not when the alleged deleterious effects of its component chemicals become apparent. Here, plaintiff's claim being interposed some 20 years after the decedent's injection—the date of injury—the action is time-barred, irrespective of whether the cause of action is couched in terms of strict products liability. 417 N.Y.S. 2d at 922.

The import of these and similar decisions for parties injured by hazardous wastes, such as those at Love Canal, is clear. Under the time-of-exposure rule espoused in these cases countless claims would be barred arbitrarily.

It must be noted that the New York State Legislature is presently considering legislation to amend the statute of limitations in that State to the time-of-discovery rule. The bill has been approved by the State assembly and now rests in the rules committee of the senate. There is no estimate of its possibilities for passage.

That the time-of-discovery rule is the superior and more logical rule was forcefully argued in the leading case of *Karjala* v. *Johns-Manville Products Corporation,* 523 F. 2d 155 (8th Cir. 1975). In that case, plaintiff instituted an action against several manufacturers of asbestos insulation after he contracted asbestosis. Plaintiff had been an installer of asbestos insulation but had been forced to leave his job because of his condition. Plaintiff had been constantly exposed to great quantities of asbestos dust from 1940 to 1966. In 1959 plaintiff began to experience a shortness of breath, congestion, loss of appetite, and general weakness. Plaintiff suspected he had tuberculosis, but a chest X-ray did not confirm this condition. In early 1963 a tumor was discovered on plantiff's right lung and was removed in May. Finally, after coughing up blood in 1966, plaintiff was told by his physician that he had asbestosis and would have to leave his job. Plaintiff filed suit in 1966.

The defendants argued that the statute of limitations barred plaintiff's suit. The Eighth Circuit Court of Appeals, upholding the trial court, concluded, however, that the statute of limitations did not begin to run until some harm or impairment, for which the defendant could be liable, manifested itself. As the court explained:

> [T]here is rarely a magic moment when one exposed to asbestos can be said to have contracted asbestosis; the exposure is more in the nature of a continuing tort. It is when the disease manifests itself in a way which supplies some evidence of

> causal relationship to the manufactured product that the public interest in limiting the time for asserting a claim attaches and the statute of limitations will begin to run. 523 F.2d at 160.

The time-of-discovery rule was also praised in *Harig* v. *Johns-Manville Products Corporation,* 284 Md. 70, 394 A. 2d 299 (1978). In Harig, plaintiff sued for damages resulting from occupationally induced malignant mesothelioma. Plaintiff had terminated her employment with the defendant in 1955 but did not develop the disease until 1975. Plaintiff brought suit in 1977. In ruling that the statute of limitations did not begin to accrue until the time of discovery, the court declared:

> In cases where the initial injury is inherently unknowable * * * the statute of limitations should not begin to run until the plaintiff should reasonably learn of the cause of action. Avoiding possible injustice in such cases outweighs the desire for repose and administrative expediency, which are the primary underpinnings of the limitations statute. 394 A.2d at 305.

The time-of-discovery rule has, moreover, been adopted by the U.S. Supreme Court in its construction of the statute of limitations for the Federal Employer's Liability Act. In *Urie* v. *Thompson,* 337 U.S. 163 (1949), plaintiff sued for injuries sustained from breathing silica dust over a 30-year period. The Court rejected any theory that would bar a plaintiff's cause of action before he was aware of the nature of his injury. The Court stated:

> We do not think the humane legislative plan intended such consequences to attach to blameless ignorance. Nor do we think those consequences can be reconciled with the traditional purposes of statutes of limitations which conventionally require the assertion of claims within a specified period of time after notice of the invasion of legal rights. The record * * * is clear that Urie became too ill to work in May of 1940 and that diagnosis of his condition was accomplished in the following weeks. There is no suggestion that Urie should have known he had silicosis at any earlier date. It follows that no specific date of contact with the substance can be charged with being the date of injury, inasmuch as the injurious consequences of the exposure are the product of a period of time rather than a point in time; consequently, the affected employee can be held to be "injured" only when the accumulated effects of the deleterious substance manifest themselves, 337 U.S. at 170.

The Court thus clearly adopted the view that when an injury does not manifest itself immediately, the cause of action should accrue not when the injury was initially inflicted, but when the plaintiff had reason to know that he had been injured. Generally, then, the cause of action would accrue when the plaintiff's condition was diagnosed, unless there was evidence that the plaintiff should have known at an earlier date that he was injured.

## NEED FOR A DEFINED LIMITING PERIOD

In order to facilitate suits by victims of hazardous wastes, any statutory provision should contain not only a grant of Federal jurisdiction but also reference to use of the time-of-discovery rule and a specific limiting period. The "superfund" legislation in the other body, S. 1480, provides that there shall be liability under the act for "all damages for economic loss or loss due to personal injury," including, among others, damages for harm to personal and real property, loss of income and profits, impairment of earning capacity, and medical and burial expenses. While more detailed, this language is similar to that contained in the original House bill, H.R. 7020. The other body's bill provides additionally, however:

No claim may be presented or may an action be commenced for damages under this Act unless that claim is presented or action commenced within three years from the date of discovery of the loss or the date of enactment of this Act, whichever is later.

Delineation of a specific time or the commencement and duration of the applicable statute of limitations here is necessary to avoid any uncertainties and ambiguities that could develop with less explicit language. For example, the original version of H.R. 7020 created liability simply for all damages for personal injury, injury to real or personal property, and economic loss resulting from a release of hazardous waste. It is unclear exactly what impact this language could have on plaintiffs' claims. In the absence of a specifically defined limiting period, the courts might create a Federal statute of limitations for these actions under the guise of Federal common law. Given the limited use of Federal common law, however, this is improbable. Alternatively, the courts, in a stretch of jurisprudence, might grant an unlimited cause of action. This, too, is improbable; and even if such were possible, its fairness to defendants would be highly questionable.

The more likely result is that without a specific limiting period, the language would provide only access to a Federal forum for tort claims. The Federal courts, under the doctrine of Erie against Tompkins, would then have to look to State law to ascertain the relevant statute of limitations. If so, those plaintiffs able to bring a hazardous waste injury suit would be only slightly better off than if they had sued in State court. More importantly, many potential plaintiffs would still be blocked by restrictive State statutes of limitations that would now be applied also by Federal courts in the particular forum States. Whichever path might ultimately be chosen by the courts, it seems desirable to avoid any possible confusion by making the House bill's language as explicit as possible and incorporating into it a set year limit on injury actions comparable to that in the Senate bill.

## POLICY BEHIND STATUTES OF LIMITATIONS

When considering the Federal forum issue, it is useful to bear in mind the policy reasons behind the statute-of-limitations concept. A statute of limitations is intended to protect unsuspecting defendants from stale claims by plaintiffs who, intentionally or negligently, fail to bring suit expeditiously. This concern is basically inappropriate in actions delayed, not out of deceit or sloth, but because it was impossible for the plaintiff to have known of his/her injury. The punitive effect of a statute of limitations was never intended to apply in such an instance. Where the time of exposure rule is in effect, however, courts have felt obliged to deny suits for latent personal injuries, believing that alteration of the rule is a legislative prerogative. Although some States have adopted the time of discovery rule judicially, legislative action is thus needed. Such action would indeed change existing restrictive limiting statutes in the minority of States that retain them; this is the desired effect. For the majority of jurisdictions, moreover, a Federal statute of limitations would merely codify and affirm the existing procedures.

In addition to avoiding any punitive impact on plaintiffs, the time of discovery rule had been cited as capable of furthering the procedural policy behind statutes of limitations in cases involving delayed-effect injuries. In *Raymond* v. *Eli Lilly & Company,* 117 N.H. 164, 371 A. 2d 170 (1977), the New Hampshire Supreme Court articulated five reasons for the desirability of the discovery rule for latent injuries. First, the rule does not facilitate unfair surprise against potential defendants because industry is fully aware of the latency period required for many injuries to manifest themselves. Second, because the evidence in toxic substances cases is primarily documentary, the traditional concerns about stale evidence, disappearing witnesses, and fading memories, which constitute the major justification for a restrictive statute of limitations, become less important. Third, the passage of time in such cases is actually likely to improve the quantity and quality of scientific evidence available to establish—or disprove—a causal connection between a plaintiff's injury and a defendant's activities. Fourth, by removing procedural obstacles to liability, the body of scientific knowledge concerning toxic/hazardous substances will increase because industry will perform additional tests on these substances when it is to their advantage to do so. Finally, the possibility of actual liability will act as a strong incentive for industry to exercise greater care in its activities and reduce any unnecessary exposure to these substances. While the court in Raymond was concerned specifically with a drug-caused injury, its remarks are applicable to latent injuries caused by hazardous waste as well.

### TWO-PART TIME-OF-DISCOVERY RULE

While granting a Federal cause of action with the time of discovery rule will enable plaintiffs to overcome existing restrictive State practices, such may nonetheless not provide victims of hazardous waste with all the procedural relief that is actually needed. A strong argument can be made that the Federal statute of limitations should be triggered by a two-part discovery rule: that the statute should not begin to run until such time that the plaintiff (1) discovered or should have discovered his/her injury, and (2) discovered or should have discovered a causal relationship between his/her injury and the defendant's conduct. Such a provision would accommodate those cases in which discovery of an injury and discovery of the causal relationship do not take place simultaneously—or at least not with sufficient proximity to permit a suit within the statute of limitations. It is not improbable that some victims, upon discovering their injuries, will not immediately realize the cause or the source of their harm. A physician may not attribute a victim's symptoms to exposure to hazardous waste; or even if the general medical/chemical cause can be traced, the waste disposal site may still be unknown to the public. Moreover, even if the disposal site is discovered it may be inactive, and the statute of limitations may run before the dumpers—that is, defendants—can be identified. Accordingly, employment of the discovery of the causal relationship rule would comport with the general notion of when the statute of limitations should commence: the point at which the plaintiff could first have maintained an action to a successful conclusion. It is difficult to maintain a successful suit without knowledge of either the cause of the injury or the party responsible.

## CAUSATION REQUIREMENTS

This is a more controversial justification for providing a Federal cause of action to parties injured by hazardous waste. A Federal cause of action may not in itself ease the requirements for proof of causation. It is highly possible that Federal courts in hearing suits brought under H.R. 7020, will simply adopt the present, restrictive common law causation standards of the respective forum States. On the other hand, as the Federal courts adjudicate claims under the statute, they may develop their own Federal requirements for causation. These requirements, if developed, would likely be more lenient in their demands on plaintiffs. Creation of a Federal cause of action might thus indirectly ease a plaintiff's burden of proof.

A more direct method of lessening plaintiff's currently unreasonable burden is to articulate in the act itself the requirements of causation. The other body's bill, S. 1480, enunciates factors by which a finding of presumptive causation can be made in personal injury suits brought under that act. Section 4(a)(3)(A) of S. 1480 declares that "it shall be presumed that a defendant caused or significantly contributed to—plaintiff's—injury or disease" if the plaintiff can show:

> (1) that the plaintiff was exposed to a hazardous substance found in a discharge, release, or disposal which the defendant caused or to which he contributed; and
>
> (2) that there exists a reasonable likelihood that exposure to such substance causes or significantly contributes to injury or disease of the class or type which the (plaintiff) claims to have suffered.

The presumption thereby created, however, is rebuttable by the defendant if he can demonstrate that the plaintiff's exposure to the substance in question did not cause or significantly contribute to the plaintiff's injury. The Senate bill also seems to limit use of the presumptive causation formula to claims for medical expenses.

Under the existing common law system, proof-of-causation requirements vary among the States. While some States are more lenient than others, a plaintiff would have difficulty in nearly every State demonstrating the requisite linkage between his/her injury, exposure to a hazardous substance (which may have occurred years before), and the action of the defendants, even under a scheme of strict liability. This situation may change as more waste-related suits are tried in the State courts and the judiciary becomes more familiar with the questions and factors involved. Even then, however, there will likely still be a disparity between the States in their causation requirements, and a plaintiff's likelihood of recovery could depend upon where his/her claim is brought.

## UNIFORMITY IN THE LAW

Related to the problems discussed regarding proof of causation, there is a need for consistency in theories and procedures in finding liability for waste-caused injuries. Presently, the common law tort system is disjointed and fragmented as each State maintains its own rules and requirements regarding not only causation, but evidence, pleadings, degree of liability, and so on, for personal injury cases. These disparities are accentuated when waste-related injuries are considered, for the hazardous waste issue is so new that there is no real, existing body of common law here on which State courts can rely in adjudicating claims. Each State is thus likely either to develop its own unique set of rules for such cases or to extrapolate rules from those that it already employs in other tort matters.

While differing standards of liability, et cetera, may not, in themselves, be undesirable in the usual tort case, hazardous waste injuries present a special need for consistency. As previously discussed, proof of causation will be difficult, and as each State develops its causation requirements, liability could well be dependent on the choice of forum. Because of the complexities involved here, uniformity is needed not only to lessen plaintiffs' difficulties but also to provide defendants with sufficient notice of their potential liability.

Uniformity is also needed for evidentiary purposes. For example, biostatistical data of varying sorts is likely to be an essential element of any plaintiff's suit. Nevertheless, some States may refuse to permit the introduction of such data. Not only would this occurrence severely handicap those plaintiffs unable to present biostatistical data as evidence, it would also hinder the development of an adequate body of knowledge about the effects of hazardous wastes. Such information is sorely needed now, and private litigation can help compile it.

A Federal cause of action would facilitate uniformity because of the manner in which Federal courts rely upon one another for guidance. While State judiciaries operate more as autonomous entities, the Federal courts exist as components of an overall, interrelated Federal legal network. Once theories and procedures are developed by some Federal courts for handling hazardous waste cases, the odds are good that they will be adopted by the other Federal courts as well. This is not true for State courts.

## INNOVATIVENESS OF FEDERAL COURTS

Just as the Federal courts can promote uniformity of law in hazardous waste injury suits, they can contribute to the development of new approaches to liability that are better suited to the complexities of such litigation than existing tort law. Many State courts will likely accept the view that the generation and disposal of hazardous waste constitutes ultrahazardous activity and so subjects producers and dumpers to strict liability. It is also possible, however, that some States will make great demands of proof, causation, et cetera, before they will hold a defendant strictly liable. There is a natural hesitancy on the part of State courts generally to accept new methods of proof and theories of liability. It may thus be difficult for an injured party to meet the traditional tort test because of the exceptional circumstances—causation, delayed overt injury—that will surround many waste-related harms.

Although the Federal courts have not always proved to be a haven for progressive legal theory, they do exhibit greater receptivity to new modes of thinking when exigent circumstances arise. Rather than deny a deserving plaintiff recovery, the Federal courts have been willing to extend existing legal theories to cover novel situations or even to create new legal rules to meet changing times.

Certainly, some State courts, such as California's, have played a leading role in judicial innovation. Many State courts, however, are not as bold and will deny recovery rather than establish new precedent.

### DIVERSITY JURISDICTION

The preceding discussion was not meant to imply that presently plaintiffs are completely denied access to the Federal courts. A plaintiff may bring suit in Federal court on the basis of diversity of citizenship if the defendant is a citizen of another State. Jurisdiction on diversity grounds, however, is not available to all victims of hazardous waste. Moreover, diversity jurisdiction does nothing to bring about the objectives enumerated at the outset of this paper. While a Federal court hearing a diversity claim might be sympathetic to creative legal theories, the Federal courts will generally apply the law of the forum State, since the claim is brought under the common law. Additionally, because the Federal courts will apply State law, uniformity of rules and procedures is not encouraged—although all evidentiary considerations are governed by the Federal Rules of Evidence. Finally, the problem with statutes of limitations and proof of causation are not alleviated.

On occasion, a Federal court has deviated from State law and established its own approach for handling complicated injury cases similar to those involving hazardous waste. Such cases will in part help to establish some Federal common law on the subject; but these cases are infrequent and the precedents too disjointed to have a significant impact. A simple grant of Federal jurisdiction, even without language affecting the statute of limitations question and requirements for causation, would be an improvement over the present system.

The text of my third amendment is as follows:

Page 47, line 25, after "costs" insert ", damages, or losses".

Page 48, in lines 2, 6, 11 and 23 after "costs" insert ", damages, and losses".

Page 49, line 1, after "COSTS" insert "DAMAGES, AND LOSSES" and after "costs" insert "damages, and losses".

Page 49, line 3, after "are" insert "(1)".

Page 49, line 9, before the period insert: ", and (2) all damages for personal injury, injury to real or personal property, and economic loss, resulting from such release or threatened release".

Page 49, line 10, after "To Whom Liable.—" insert "(1)".

Page 49, line 11, after "(b)" insert "(1)".

Page 49, after line 19, insert:

"(2) The liability for damages or loss described in subsection (b)(2) shall be to the person who sustained such damages or loss. In the case of any such damages or loss to natural resources owned, controlled, or managed by the United States or by a State or local government, the liability shall be to the United States, the State, or the local government, as the case may be. No action may be brought under this section for any damages or loss described in subsection (b)(2) after the date three years after the date on which the plaintiff discovers such damages or loss, or after the date three years after the date of the enactment of the Hazardous Waste Containment Act of 1980, whichever is later."

### CONCLUSION

Mr. Speaker, all three of these amendments merit the support of this body. In closing, I would like to express my deep thanks to two members of my staff who have devoted long hours and great effort to serving the public interest with respect to this issue. Mr. Ted von Glahn has been principally responsible for the work in my office on the hazardous waste issue. His assistance has been invaluable. Mr. Steve Owens has been principally responsible for the work in my office on the liability portion of this legislation and has crafted the three amendments that I have just discussed. All three of us share with many other Americans a deep commitment to finding a just remedy for the enormous problems associated with hazardous waste disposal.●

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[From the Congressional Record, Sept. 5, 1980, p. H8382]

By Mr. FLORIO: **[Secs. 211 and 221]**

—Page 56, line 14, strike out "0.6" and insert in lieu thereof "0.4".

Page 57, line 7, strike out "0.6" and insert in lieu thereof "0.4".

Page 60, line 19, strike out "$2.54" and insert in lieu thereof "$1.88".

Page 60, line 21, strike out "$2.33" and insert in lieu thereof "$1.73".

Page 62, line 2, insert after "chromite" the following: "(excluding that portion used to make ferrochrome)".

Page 67, line 12, strike out "$75,000,000" and insert in lieu thereof "$85,000,000".

Page 67, line 13, strike out "$75,000,000" and insert in lieu thereof "$85,000,000".

Page 67, line 14, strike out "$100,000,000" and insert in lieu thereof "$113,000,000".

Page 68, beginning in line 4, strike out "as in" and all that follows down to the period in line 6.

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[From the Congressional Record, Sept. 9, 1980, pp. E4295-E4296]

## HEALTH STUDIES AMENDMENT TO H.R. 7020, THE HAZARDOUS WASTE CONTAINMENT ACT OF 1980

● Mr. ECKHARDT. Mr. Speaker, when the House of Representatives considers H.R. 7020, the Hazardous Waste Containment Act of 1980, I intend to offer two amendments. The first, which I will discuss in this statement, would provide funds for health studies at hazardous waste sites **[Sec. 104(i)]**.

Specifically, the amendment would permit the expenditure of up to $10 million a year from the superfund to conduct studies of the health effects resulting from contamination associated with any hazardous waste site that has not received a final permit from the Environmental Protection Agency. The amendment reads as follows:

Page 29, after line 13, insert:

(g) STUDIES.—Of the amounts available for purposes of this subpart, not more than $10,000,000 per fiscal year, such sums to remain available until expended, may be used by the Secretary of Health and Human Services (acting through the Public Health Service) to conduct studies of the health effects resulting from contamination associated with inactive hazardous waste sites and other hazardous waste sites which are not operating pursuant to a permit under section 3005(a). Such studies may be conducted at the request of the Administrator or at the initiative of the Secretary of Health and Human Services.

Mr. Speaker, the amendment is grounded in the 13 days of hearings that my Subcommittee on Oversight and Investigations has conducted on the subject of hazardous waste disposal during the 96th Congress. Many of our specific findings were incorporated into H.R. 7020, a bill I strongly support. However, 1 week after the Commerce Committee reported H.R. 7020, my subcommittee joined with the Government Operations' Subcommittee on Environment, Energy, and Natural Resources to conduct a hearing on EPA's decision to relocate 700 families from the Love Canal for health purposes. The hearing revealed a state of confusion as to what studies should have been done, when and by whom. The quality of the studies actually done over the 3-year period varied tremendously and the State of New York and the Federal Government squabbled continuously over what studies should be done and who should pay for them. While the two governments were playing Alphonse and Gaston, the residents of the Love Canal area initiated one of the most important studies. Then the Federal Government initiated a study to use in its litigation against the Hooker Chemical Co. The study, which was intended for litigation and not as a scientific study, revealed chromosomal damage to some of the area's residents and set off a panic there which resulted in the residents holding two Government officials hostage for a brief period of time. Even though this study lacked sufficient safeguards to provide definitive evidence of actual harm, the Federal Government made a political decision amidst the chaos to relocate the remaining 700 Love Canal families—although I should add that there had been more than enough evidence produced by the numerous other studies to have justified moving the residents a year earlier. The overall effort was disgraceful, causing the Love Canal residents undue anguish and probably further harm, and delaying for about 2 years the initiation of the kind of studies necessary to determine the full extent of the problem.

It was during our May 22 hearing that the subcommittee carefully examined H.R. 7020 to determine if it contained adequate funds for health studies. Much to our chagrin and surprise, the provision for health studies that had been contained in the earlier version of H.R. 7020 was not included in the bill reported by our committee. Therefore, Congressman Albert Gore, Jr., who has been enormously forceful in pursuing this issue, and I drafted this amendment to provide a source of funds for independent health studies of possibly dangerous hazardous waste sites by competent professionals in the environmental health field. I am pleased to say that our effort is being supported actively by Congressman Norman Lent, the ranking minority member of the Oversight Subcommittee; Congressmen Toby Moffett and Pete McCloskey, the chairman and ranking minority member of the Government Operations' Subcommittee on Environment, Energy and Natural Resources, that joined us in conducting the hearing on the removal of the Love Canal residents for health reasons; Congressman Andy Maguire and Congressman George Brown.

We believe that the amendment will further two very important provisions of the bill. First, it will help the Federal Government set priorities among possibly dangerous hazardous waste sites, as required by section 3032(b) of the bill **[Sec. 105(8)]**. The setting of such priorities will then trigger the cleanup of those sites that present or may present a threat to public health or the environment. Second, the health studies will help State and Federal authorities determine when to relocate people away from such dangerous sites, as provided for in sections 3041(a)(2)(A) and 3041(e)(2)(A) **[Sec. 104]**.

I hope all of you will join us to insure that H.R. 7020 provides State and Federal officials with the best possible information to make the important decisions as to what sites should be cleaned up and when people should be removed from the site area to assure their health.

Tomorrow, I will include a statement in the extension that discusses my other amendment, which would provide for a comprehensive inventory of all hazardous waste sites, both inactive and active.●

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[From the Congressional Record, Sept. 10, 1980, pp. E4305-E4306]

## HAZARDOUS WASTE SITE INVENTORY AMENDMENT TO H.R. 7020

● Mr. **ECKHARDT**. Mr. Speaker, when the House of Representatives considers H.R. 7020, the Hazardous Waste Containment Act of 1980, I intend to offer two amendments. The first, which I discussed in yesterday's Extensions of Remarks at page E4295, would provide funds for health studies at hazardous waste sites. The second, which is the subject of this statement, would provide for a comprehensive inventory of all hazardous waste sites in the country.

In September 1979, the Commerce Committee's Oversight and Investigations Subcommittee, which I chair, issued a report, entitled "Hazardous Waste Disposal," which concluded that, "Hazardous waste disposal is one of the most serious environmental problems faced by this country today." Obviously, this is a problem of enormous dimensions. For example, in its first year of operation, EPA's Hazardous Waste Enforcement Task Force has helped the Justice Department file suits seeking about $230 million just for the cost of remedial work on Hooker Chemical Corp.'s four sites in Niagara Falls, N.Y. Overall, in just this first year, the Justice Department has filed a total of 40 suits for remedial work with an estimated cost of between $330 million and $590 million. While these statistics hint at the size of the problem, they are merely the tip of the iceberg. We really have no idea what the full dimensions could be. Therefore, one of the main recommendations of our report was for, "An inventory of all hazardous waste disposal sites, so that proper regulatory and enforcement priorities can be established."

I provided for the creation of such an inventory in my hazardous waste bill, H.R. 6931, and a similar provision was incorporated in the introduced version of H.R. 7020, the bill we are considering today. Unfortunately, in our haste to move H.R. 7020 through the full Interstate and Foreign Commerce Committee, the provision was narrowed so that now it would provide for an inventory of inactive hazardous waste sites only. My amendment would restore the original concept of H.R. 7020 so that we would have an inventory of all hazardous waste sites, inactive and active.

The effect of my amendment would be to apply the provisions of H.R. 7020 to the owners and operators of both active and inactive hazardous waste sites. As amended, H.R. 7020 then would require all owners or operators of such sites to provide the following information to State and local officials within 3 months after EPA issues the necessary forms:

(A) A description of the location of the hazardous waste site;

(B) The name and address of, or corporate headquarters of, the owner of the site, determined as of the date of submission of the information;

(C) The current status of the site, including (i) whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased), (ii) whether there have been any releases of hazardous waste from the site which have caused damage to public health or the environment, and (iii) the nature of any other activity being carried out at such site;

(D) Such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site, and relating to the hydrogeological and geophysical properties of the site, as may be necessary to determine the extent of any environmental or health hazard which may be associated with such site; and

(E) An identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site.

Mr. Speaker, we must have this information if we are to set rational priorities for cleaning up dangerous sites. Absent adoption of this amendment, we will not have the necessary information about active sites under EPA's proposed regulations until all such sites have received permits from EPA, a process EPA admits will take some 7 to 10 years. Moreover, I believe that the basic mechanism contained in H.R. 7020 for collecting this information—from site owners in the first instance and then from generators or transporters where the owner fails to comply or where the information is inadequate—is the most efficient, least expensive and least burdensome way of securing this vital information.

I hope all my colleagues will support this amendment that I believe is essential to the workability of H.R. 7020.●

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[From the Congressional Record, Sept. 10, 1980, pp. H8745–H8746]

**By Mr. ECKHARDT:**

—Page 7, line 14, after "site" insert: "or other hazardous waste site which is not operating pursuant to a permit under section 3005(a)".

Page 7, line 24, strike out "inactive".

Page 9, line 5, strike out "inactive".

Page 10, line 14, strike out "inactive".

Page 10, line 15, before the period insert: "to which this section applies".

**By Mr. GORE: [Sec. 107]**

—Page 47, line 17, strike out "an" and insert in lieu thereof "a negligent"

Page 47, line 17, after "party" insert: "other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant,"

Page 48, after line 4, insert the following new paragraph, renumbering as appropriate.

(2) For purposes of subparagraph (1)(C) a defendant (including a generator, transporter, shipper, or disposer) must demonstrate that he exercised due care with respect to all foreseeable acts or omissions of any third party and that he exercised due care in light of all relevant facts and circumstances, including:

> (A) exercised due care in the selection and instruction of a responsible person engaged by such defendant for the transportation, storage, treatment or disposal of said hazardous waste;
>
> (B) provided adequate information as to the identity, quality, composition, condition, characteristics and potential hazard of the waste to such person;
>
> (C) took reasonable measures to assure and verify that such person properly carried out the activities for which he was engaged;
>
> (D) properly labeled, loaded and packaged the waste and properly equipped and maintained the container or facility used for the transportation, storage, treatment, or disposal of the waste, and

—Page 48, line 6, after "establishes" insert "by a preponderance of the evidence".

Page 48, line 11, after "establishes" insert "by a preponderance of the evidence".

Page 48, strike out lines 16 through 20 and insert in lieu thereof:

(B) To the extent apportionment is not established under subparagraph (A), the court may apportion the remaining costs among the parties if the court deems such apportionment appropriate. In apportioning liability under this paragraph, the court may consider factors, including:

(i) the ability of the party to demonstrate that this contribution to a discharge, release, or disposal of a hazardous substance can be distinguished;

(ii) the amount of hazardous substance involved;

(iii) the degree of toxicity of the hazardous substance involved;

(iv) the degree of involvement in the manufacture, treating, transporting, disposing of the hazardous substance; and

(v) the degree of cooperation with Federal, State, or local officials to prevent any harm to the public health or the environment.

Page 48, line 21 strike "this paragraph" and insert "subparagraph (A)".

—Page 47, line 25, after "costs" insert ", damages, or losses".

Page 48, in lines 2, 6, 11, and 23 after "costs" insert ", damages, and losses".

Page 49, line 1, after "COSTS" insert "DAMAGES, AND LOSSES" and after "costs" insert "damages, and losses".

Page 49, line 3, after "are" insert "(1)".

Page 49, line 9, before the period insert: ", and (2) all damages for personal injury, injury to real or personal property, and economic loss, resulting from such release or threatened release".

Page 49, line 10, after "TO WHOM LIABLE.—" insert "(1)".

Page 49, line 11, after "(b)" insert "(1)".

Page 49, after line 19, insert:

(2) The liability for damages or loss described in subsection (b)(2) shall be to the person who sustained such damages or loss. In the case of any such damages or loss to natural resources owned, controlled, or managed by the United States or by a State or local government, the liability shall be to the United States, the State, or the local government, as the case may be. No action may be brought under this section for any damages or loss described in subsection (b)(2) after the date three years after the date on which the plaintiff discovers such damages or loss, or after the date three years after the date of the enactment of the Hazardous Waste Containment Act of 1980, whichever is later.

## By Mr. STOCKMAN:

(Substitute offered by Mr. Stockman.)

[NOTE: The amendment is identical to that offered by Mr. Stockman in the debate of September 23, 1980. See p. 295 of volume 2.]

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[From the Congressional Record, Sept. 15, 1980, p. H8831]

## By Mr. STOCKMAN: [Secs. 104, 105(8), and 106]

—Page 7, line 11, strike out "or local".

—Page 8, line 8, after "(ii) whether there have been any" insert "scientifically documented".

Page 8, line 10, strike out "or the environment".

—Page 9, line 3, after "Administrator." add the following: "The Administrator shall not make such forms available prior to submitting copies of the proposed forms to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. The Administrator may not use any form that has been disapproved by a majority vote of either Committee within fifteen days of its submittal or three months after the date of enactment of this Act, whichever is later.".

—Page 9, line 18, after "paragraph (1)" insert the following: "*Provided, however,* That the Administrator may not require a generator or transporter to submit such information unless he determines that the site in connection with which the information is sought poses an imminent threat to public health or safety.".

—Beginning at page 12, line 3, strike out all that appears down through page 13, line 3.

—Page 13, line 10, after "section." add the following: "No State shall receive more than 15 percent of the total amount of such grants allocated in any one fiscal year, nor shall any State receive less than one percent of the total.".

—Page 13, line 18, strike out "$35,000,000" and insert in lieu thereof "$20,000,000".

—Beginning at page 14, line 1, after "environment.", strike all that appears down through page 14, line 24.

—Beginning at page 18, line 23, strike out all that appears down through page 20, line 8.

—Page 20, line 14, strike out "or" and insert in lieu thereof "and".

—Page 20, line 15, strike out "or the environment" and insert in lieu thereof "and safety".

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[From the Congressional Record, Sept. 16, 1980, pp. H8928-H8934]

By Mr. DINGELL:

[NOTE: The amendment is identical to that offered by Mr. Dingell in the debate of September 23, 1980. See p. 340 of volume 2.]

By Mr. STOCKMAN:

(Amendments in the nature of a substitute.)

—Strike out all after the enacting clause and substitute the following:

### SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Containment Act of 1980".

### INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this Act, or in any amendments made by this Act, shall apply to oil, or other, pollution of navigable waters.

### FINDINGS

SEC. 3. The Congress hereby finds that—

(1) hazardous waste has been disposed of in a manner which may result in a significant danger to public health and safety;

(2) the exact location of many hazardous waste sites is unknown.

(3) cooperation by Federal, State, and local governments and private industry can assist in compiling an up-to-date inventory of the location, condition, and contents of existing hazardous waste sites;

(4) a systematic method of funding the cost-effective clean-up of dangerous hazardous waste sites is necessary to protect public health and safety.

### GOALS

SEC. 4. The goals of this legislation are to—

(1) provide grants for a State-by-State investigation of inactive hazardous waste disposal sites and the condition of such sites;

(2) provide grants for States to evaluate such sites, and set priorities among the sites, based on the danger they present to human populations; and

(3) provide grants to assist States in the containment and cost-effective clean-up of dangerous inactive hazardous waste disposal sites, to assure protection of the public health and safety.

### AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 5. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

## "PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

### "Subpart A—General Provisions

### "COVERAGE OF PART

"SEC. 3021. The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

### "DEFINITIONS

"SEC. 3022. For purposes of this part, the term—

"(1) 'Inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(A) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(B) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under 3005 (including subsection (e) thereof) is required.

"(2) 'Release' means, with respect to hazardous waste, the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping or other transfer of hazardous waste to any land, air, or water, except that such term does not include any such activity—

"(A) which is subject to part 1 of this subtitle, or

"(B) which is carried out in compliance with the requirements of this part and other applicable law.

"(3) 'Chief State Public Health Officer' means the State officer or employee designated by the Governor for purposes of this Act.

### "Subpart B—Inventory, Priorities, and Monitoring

### "HAZARDOUS WASTE SITE INVENTORY

"SEC. 3031. (a) NOTIFICATION REQUIREMENTS.—(1) Each person (including each State or local governmental department, agency, or instrumentality) who, on the date of the enactment of the Hazardous Waste Containment Act of 1980, owns or operates any inactive hazardous waste site shall provide to the relevant State and local officials (or to the Administrator in the case of a program carried out under subsection (c)) the information referred to in paragraph (2), to the extent that such information is known to, or reasonably determinable by, such person. Such information shall be provided within three months after the date of receipt from the Administrator of the forms required under this section.

"(2) The information required to be provided under this subsection is as follows:

"(A) a description of the location of the inactive hazardous waste site;

"(B) the name and address of, or corporate headquarters of, the owner of the site, determined as of the date of submission of the information;

"(C) the current status of the site, including whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased);

"(D) such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site as may be necessary to determine the extent of any health hazard which may be associated with such site;

"(E) an identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site; and

"(F) information concerning the proximity of the site to residences or other area used by individuals and its proximity to any water supply used for human consumption.

Information under this subsection shall be supplied on forms made available by the Administrator within a three-month period after the date of the enactment of the Hazardous Waste Containment Act of 1980. Upon the request of any person required to submit information under this subsection the Chief State Public Health Officer may grant a waiver to such person with respect to any information required to be submitted under this subsection where he determines that his submission of such information would be impracticable or unnecessary.

"(3) Where any person fails to comply with the requirements of this subsection with respect to any inactive hazardous waste site, or where information acquired from any person under this subsection with respect to any such site is inadequate for any reason, the State in which the site is located, or the Administrator, may exercise the authority of section 3007 of this Act to secure any information described in paragraph (2) from any person referred to in paragraph (1) or from any former or subsequent owner or operator of the site or from any generator or transporter of hazardous waste which is at the site. The State or the Administrator may, by order, require any such person to submit information described in paragraph (2) or such information as may be necessary to compile the information described in paragraph (2). The provisions of section 3008 shall apply for purposes of enforcing such an order.

"(4) Upon the request of the Administrator, each Federal department, agency, or instrumentality—

"(A) which, on the date of the enactment of the Hazardous Waste Containment Act of 1980, owns or operates any site at which hazardous waste has been treated, stored, or disposed of;

"(B) which owned or operated any such site on or before the date of the enactment of such Act; or

"(C) which has generated any hazardous waste before such date of enactment shall provide the information described in paragraph (2) to the Administrator to the extent such information is known to or reasonably determinable by such department, agency, or instrumentality. Such information shall be provided on the forms referred to in paragraph (1).

"(b) STATE INVENTORY PROGRAMS.—(1) Each State shall, as expeditiously as practicable, undertake a continuing program to compile an inventory containing the information described in subsection (a)(2) for each inactive hazardous waste site within the State. The inventory shall be based upon the information submitted to the State under subsection (a) and upon other information available to the State. For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraph (2) of subsection (a) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress.

"(2) On the basis of the inventory carried out under the preceding provisions of this subsection and on the basis of the State's determination of the relative danger to public health and safety presented by the sites subject to such inventory, each State shall establish priorities among such sites. For purposes of determining the nature and extent of such danger at any site considered by the State to present a relatively high risk of such danger, the State may require the person referred to in subsection (a)(1) to submit information with respect to such site in addition to the information described in subsection (a)(2). Any State may exercise the authority of section 3007 for purposes of this section without regard to whether or not such State has an authorized hazardous waste program under part 1.

"(c) ENVIRONMENTAL PROTECTION AGENCY PROGRAM.—If the Administrator determines that any State program under subsection (b) is not adequately providing information respecting the sites in such State in compliance with subsection (b), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program described in subsection (b) in such State. In any such case—

"(1) the Administrator shall have the authorities provided with respect to State programs under subsection (b);

"(2) the funds allocated under subsection (e) for grants to States under this section may be used by the Administrator for carrying out the program in such State; and

"(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

"(d) GRANTS.—(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator shall make grants to the State for purposes of carrying out the program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purpose of this section. The Administrator shall make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before the date of the enactment of the Hazardous Waste Containment Act of 1980 to reimburse the State for all, or any portion of, the costs incurred by the State in conducting such program.

"(2) There are authorized to be appropriated to carry out this section $35,000,000, to remain available until expended.

### "ESTABLISHMENT OF PRIORITIES

"SEC. 3032. The Administrator shall establish and publish a list setting forth national priorities among the inactive hazardous waste sites throughout the United States which are releasing, or which present a substantial threat of releasing, hazardous waste. Such list shall be published by the Administrator not later than six months after the date of the enactment of this section and revised at least annually thereafter. The priorities shall be based upon the Administrator's determination of the relative danger to public health and safety presented by such sites. The Administrator shall utilize any priorities established by the States under section 3031 for the purpose of establishing national priorities under this subsection.

### "MONITORING OF INACTIVE SITES

"SEC. 3033. Upon his determination that any inactive hazardous waste site poses a reasonable likelihood of harm to public health or safety, the Chief State Public Health Officer may require any person and any Federal department, agency, or instrumentality which owns the site to—

> "(1) monitor the extent to which hazardous waste associated with such site is released and periodically submit data resulting from such monitoring to the Administrator and to appropriate State and local authorities; and
>
> "(2) immediately notify the Administrator and the appropriate State and local authorities when any hazardous waste associated with such site is released in a manner which presents or may present a substantial threat to public health or safety.

Where the owner is not financially capable of carrying out the requirements of this subsection in a manner satisfactory to the Chief State Public Health Service Officer, he may, by order, require any person who owned or operated the site at the time during which a substantial portion of the hazardous waste at such site was treated, stored, or disposed of at the site, to carry out such requirements.

### "IMMUNITY

"SEC. 3034. No information received from any person pursuant to this subpart, and no information derived therefrom, may be used against such person in any criminal proceeding except a prosecution for perjury or for making a false statement or representation.

### "DESTRUCTION OF RECORDS

"SEC. 3035. No person may knowingly destroy, mutilate, erase, falsify, dispose of, conceal, or otherwise render unavailable or unreadable any records reasonably necessary for compliance with the requirements of this part.

"Violations of this section shall be punishable as provided in section 3061(b).

## "Subpart C—Hazardous Waste Response Authority

### "EMERGENCY RESPONSE

"SEC. 3041. (a) EMERGENCY RESPONSE AUTHORITY OF ADMINISTRATOR.—(1)(A) Upon submission to the Administrator by the Chief State Public Health Service Officer of evidence that the release of any hazardous waste from or at an inactive hazardous waste site in such State presents or may present an imminent and substantial endangerment to public health or safety, or that there is a substantial threat of such a release, the Administrator may take such emergency response action as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or safety which is associated with such release or threatened release.

"(B) The Administrator shall not exercise the authority of this paragraph for undertaking any action unless he determines that the responsible party, or the State or local government will not take the proper action.

"(C) If the Governor of any State notifies the Administrator of any release of hazardous waste into the environment from or at any inactive hazardous waste site in the State which requires, in the Governor's determination, action under this paragraph, the Administrator shall, not later than thirty days after his receipt of such notice, inform the Governor of what action, if any, will be taken by the Administrator under this paragraph.

"(2)(A) Whenever the Administrator determines that an inactive hazardous waste site presents an unreasonable risk of harm to public health or safety, he may, after notice and opportunity for written or oral public comment relocate, contain, and clean up the hazardous waste at, or associated with such site, and take such other remedial action of any kind with respect to such waste, as he determines necessary.

"(B) The Administrator shall not exercise the authority of subparagraph (A) where he determines that the responsible party or the State or local government concerned will otherwise take the proper action.

"(C) Action may be taken under this paragraph only in accordance with the priorities established by the Administrator under section 3032.

"(3)(A) Upon submission to the Administrator by the Chief State Public Health Service Officer of evidence that there are conditions similar to, but not immediately identifiable as, a release of any hazardous waste from or at an inactive hazardous waste site which conditions present or may present an imminent and substantial endangerment to public health or safety and whenever the Administrator is unable to determine after an inspection of the conditions by his duly appointed representative—

"(i) whether or not such conditions are subject to any provision of Federal law other than this part, or

"(ii) whether or not the Administrator or any other department, agency, or instrumentality of the United States has authority under any other provision of law to take remedial action with respect to such conditions,

the Administrator may provide such assistance to State and local governments, and take such emergency response actions, as he determines should be taken immediately to prevent, minimize or mitigate any harm to public health or safety which is associated with such conditions.

"(B) The Administrator may exercise the authority of this paragraph for a period expiring on the earlier of—

"(i) three months from the date on which he initiates such action, or

"(ii) the date on which he determines that an appropriate remedial response is authorized to be taken under any authority of law other than this paragraph.

"(C) If following the expenditure of amounts under subparagraph (A) for any action or assistance, the Administrator determines that the action taken or assistance provided is authorized under any authority of the Administrator other than this part, the Administrator shall promptly reimburse the Fund established under subpart D for amounts expended under the authority of this paragraph prior to such determination.

"(4) The Administrator shall not exercise the authority of this subsection to engage in the transportation and offsite disposition of hazardous waste unless the Administrator determines that undertaking such offsite activity is—

"(A) less expensive than undertaking such activity onsite; or

"(B) essential to protect the public health or safety due to the seriousness of the danger which may be created by the physical, chemical, or biological properties of the waste and the potential for human exposure, or the unavailability of onsite methods for preventing or minimizing the danger; or

"(C) carried out at a facility where substantial new capacity has been established at such levels as may be necessary to accommodate the hazardous waste transferred to that facility under paragraph (1) or (2) as well as hazardous waste to be treated, stored, or disposed of pursuant to a permit under section 3005.

"(5)(A) The Administrator is authorized to provide equipment and other items necessary to establish and maintain damage assessment capability and damage response capability of Federal State, and local strike forces, or other emergency response teams, established in conformity with the National Hazardous Waste Response Plan.

"(B) Not more than $5,000,000 of the amounts available to the Administrator in any fiscal year for purposes of this subpart may be used for research and development to improve hazardous waste cleanup and containment technologies in order to ultimately reduce response and containment costs at inactive hazardous waste sites.

"(6) Where the Administrator makes any determination under paragraph (1) or (2) with respect to any site owned or operated by a Federal department, agency, or instrumentality, the department, agency, or instrumentality shall take the action referred to in such paragraph (1) or (2) in lieu of action by the Administrator under such paragraphs.

"(7) Where the Administrator determines that a State of local government has the capability to carry out any or all of the actions required to be carried out pursuant to a determination of the Administrator under paragraph (1) or (2), and where such State or local government agrees to carry out such actions, the Administrator shall enter into—

"(A) cooperative agreements involving the expenditure of appropriated funds, or

"(B) contracts with such State or local government to take such action. Such agreements shall be subject to the cost sharing provisions of section 3042.

"(8) Anyone authorized by the Administrator to take any action under this part may, in carrying out such authority, exercise the entry, inspection, and other authorities contained in section 3007 in the same manner as provided for officers or employees of the Environmental Protection Agency under section 3007.

"(b) RESPONSIBLE PARTY.—As used in this section, the term 'responsible party' means with respect to any inactive hazardous waste site, any person who—

"(1) owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any hazardous waste, or

"(2) generated or disposed of, either at the site or elsewhere, a substantial portion of the hazardous waste treated, stored, or disposed of at such site which waste is posing an unreasonable risk to public health or safety.

"(c) APPORTIONMENT OF COSTS AMONG RESPONSIBLE PARTIES.—Where there are two or more responsible parties with respect to any inactive hazardous waste site, if one of such responsible parties takes remedial action with respect to such site which results in the expenditure of amounts which he establishes to be in excess of his proportionate share of such costs, such party may recover such excess amount from the Fund established under subpart D. For purposes of this subsection, the proportionate share of such responsible party shall be determined under rules promulgated by the Administrator.

"(d) DETERMINATION OF APPROPRIATE RESPONSE.—The Administrator shall select appropriate actions determined to be necessary to carry out the provisions of this section. The appropriate actions shall be as nearly in accordance with the National Hazardous Waste Response Plan as possible and shall provide for that cost-effective response which provides a balance between—

"(1) the need for protection of public health and safety at the site under consideration, and

"(2) the availability of amounts from the fund established under subpart D to respond to other sites which present or may present a threat to public health or safety.

With respect to actions under paragraphs (1) and (3) of subsection (a), the Administrator shall make such determination taking into consideration the need for immediate action.

"(e) INTERIM SITES.—(1)(A) Upon receipt of evidence that the release of any hazardous waste from or at a hazardous waste site which is operating pursuant to an interim permit under section 3005(e) presents or may present an imminent and substantial endangerment to public health or safety, or that there is a substantial threat of such a release, the Administrator may take such emergency response actions as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or safety which is associated with such release or threatened release. The Administrator shall not exercise the authority of this paragraph for undertaking any action where he determines that the responsible party, or the State or local government will take the proper actions.

"(B) If the Governor of any State notifies the Administrator of any release of hazardous waste from or at any hazardous waste site which is operating pursuant to an interim permit under section 3005(e) in the State which requires, in the Governor's determination, action under this paragraph, the Administrator shall, not later than thirty days after his receipt of such notice, inform the Governor of what action, if any, will be taken by the Administrator under this paragraph.

"(2) Whenever the Administrator determines that a hazardous waste site which is operating pursuant to an interim permit under section 3005(e) presents or may present an unreasonable risk of harm to public health or safety, he may, after notice and opportunity for written or oral public comment—

"(A) relocate, contain and clean up the hazardous waste at, or associated with, such site, and take such other remedial action of any kind with respect to such waste, as he determines necessary; or

"(B) by order require any responsible party to take such action in whole or in part.

Prior to issuance of such an order, the Administrator shall afford any such responsible party an opportunity to confer with the Administrator with respect to any action proposed to be included in such order, including the technical and financial capability of such party to take any such action and the reasonableness of such order taking into consideration the degree to which such party may have caused or contributed to such unreasonable risk. The Administrator shall not exercise the authority of subparagraph (A) or (B) where he determines that the responsible party or the State or local government concerned will otherwise take the proper action.

"(3) When the Administrator or any State or local government has incurred costs pursuant to this subsection with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), the provisions of section 3071 shall apply for purposes of recovering such costs in the same manner as such provisions apply in the case of inactive hazardous waste sites.

"(4) As used in this subsection, notwithstanding section 3022(2)(A), the term 'release' includes the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping, or other transfer of hazardous waste to any land, air, or water at or from a hazardous waste site which is operating pursuant to a permit treated as having been issued under section 3005(e).

"(5) As used in this subsection, the term 'responsible party' means with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), any person who—

"(A) owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any unregulated hazardous waste, or

"(B) generated or disposed of, either at the site or elsewhere, a substantial portion of the hazardous waste treated, stored, or disposed of at such site which waste is posing an unreasonable risk to public health or safety.

"(6) Where there are two or more responsible parties with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), if one of such responsible parties is ordered to take action under this section which results in the expenditure of amounts which he establishes to be in excess of his proportionate share of such costs, such party may recover such excess amount from the Fund established under subpart D. For purposes of this subsection, the proportionate share of such responsible party shall be determined under regulations promulgated by the Administrator.

"(7) The Administrator shall select appropriate actions determined to be necessary to carry out the provisions of this subsection. The appropriate actions shall be as nearly in accordance with the National Hazardous Waste Response Plan as possible and shall provide for that cost-effective response which provides a balance between—

"(A) the need for protection of public health and safety at the site under consideration, and

"(B) the availability of amounts from the fund established under subpart D to respond to other sites which present or may present a threat to public health or safety.

With respect to actions under paragraph (1), the Administrator shall make such determination taking into consideration the need for immediate action.

### "STATE CONTRIBUTION

"SEC. 3042. (a)(1) Not more than 75 percent of the total costs of actions taken by the Administrator with respect to any site under section 3041 may be paid by the United States. At least 25 per centum of such total costs shall be paid by the State in which the inactive hazardous waste site concerned is located. Not more than 75 percent of such total costs may be paid by the Administrator when any action under section 3041 is taken by the State pursuant to a determination under section 3041(a)(1)(B) or 3041(a)(2)(B). In any such case at least 25 percent of such total costs shall be paid by the State. No amount may be expended by the Administrator for any such action by the Administrator or the State unless the State has established assurances satisfactory to the Administrator that—

"(A) the aggregate costs of long-term maintenance associated with the hazardous waste site concerned will be funded from non-Federal sources,

"(B) a hazardous waste disposal facility which meets the requirements of part 1 of this subtitle will be available for any storage, destruction, treatment, or disposal of any such hazardous waste which the Administrator determines should be carried out at a location other than a site from which such hazardous waste was released,

"(C) the State share of the costs under section 3041 will be available; and

"(D) such State will provide adequate measures to protect the health and safety of employees engaged in removal, containment, and other remedial actions undertaken pursuant to section 3041.

"(2) No amount may be expended by the United States for the long-term maintenance of any hazardous waste with respect to which any action has been taken under paragraph (1) or (2) of section 3041(a).

"(3) For purposes of this subsection, the term 'long-term maintenance' shall have the meaning provided under regulations promulgated by the Administrator to carry out the purposes of this section.

"(4) In determining the portion of the costs referred to in this section which is required to be paid by a participating State, the Administrator shall grant the State a credit for amounts expended or obligated by such State after January 1, 1978, and before the date of the enactment of this Act, for purposes of remedial action taken by the State with respect to any release of hazardous waste in such State. Such credit shall reduce the amount which the State would otherwise be required to pay in connection with assistance provided under this section until such time as the aggregate amount of credit granted by the Administrator to such State equals the amount required to be paid by such State. No credit shall be granted under this paragraph for any amount expended or obligated by any State for the temporary or permanent relocation of any individuals residing in the vicinity of, or otherwise affected by, the release involved.

"(b)(1) Paragraphs (1) and (2) of subsection (a) shall not apply to any amount expended with respect to any hazardous waste site owned or operated by, or on behalf of, the United States. In the case of any such site, 100 per centum of the costs referred to in such paragraphs (1) and (2) shall be paid by the agency or instrumentality of the United States by which such site is owned or operated (or on behalf of which such site is operated).

"(2) Paragraph (1) of subsection (a) shall not apply to expenditures of the Administrator which are not in excess of $300,000 with respect to any hazardous waste site.

"(3) During the period ending eighteen months after the date of the enactment of the Hazardous Waste Containment Act of 1980, the Administrator is authorized to pay all, or any portion, of any State's share referred to in paragraph (1) of subsection (a) pursuant to an agreement between the Administrator and the State which provides that the State will reimburse the Administrator for such payments within a reasonable period of time following the expiration of such eighteen month period.

## "Subpart D—Hazardous Waste Response Fund

### "ESTABLISHMENT OF FUND

"SEC. 3051. (a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States a Hazardous Waste Response Fund (hereinafter in this Act referred to as the "Fund") which shall be available as provided in appropriation Acts, only for the purposes specified in subsection (c).

"(b) AMOUNTS CREDITED TO FUND.—(1) The following amounts shall be credited to the Fund—

"(A) all amounts recovered by the United States under any law or rule of law permitting recovery by the United States of the costs to the United States of remedial action undertaken with respect to hazardous waste sites.

"(B) any amount reimbursed to the Fund as provided in subsection (a)(3) of section 3041,

"(C) any penalties assessed under this part, and

"(D) amounts authorized to be appropriated to the fund under paragraph (2).

"(2) There is authorized to be appropriated to the Fund for the fiscal year—

"(A) 1981, $200,000,000,
"(B) 1982, $200,000,000,
"(C) 1983, $200,000,000,
"(D) 1984, $200,000,000 and,
"(E) 1985, $200,000,000.

"(c) EXPENDITURES FROM FUND.—Amounts to be credited to the Fund under subsection (b) in any fiscal year (as estimated by the Administrator and submitted to the Congress in the annual budget submittal of the Administrator) shall be available, to the extent provided in appropriation Acts, only for action carried out under subpart C, including actions carried out by States pursuant to a determination of the Administrator under section 3041(a)(1)(B) or section 3041(a)(2)(B) and including reimbursement of excess costs pursuant to section 3041(c). Any amounts credited to the Fund in any fiscal year and not appropriated as provided in this subsection for that fiscal year shall remain available for expenditure in subsequent fiscal years. No amount credited to the Fund may be used to pay any part of the costs referred to in this section which are incurred with respect to an inactive hazardous waste site which is owned or operated by any agency of the United States.

## "Subpart E—Enforcement

### "ENFORCEMENT

"SEC. 3061. (a) CIVIL PENALTIES.—(1) The Administrator may commence a civil action against any person to impose a civil penalty for violation of any order of the Administrator under this part.

"(2)(A) The amount of penalty under this subsection shall be based on consideration of the size of the business of the owner, operator, or other person against whom the penalty is assessed, the gravity of the violation, the standard of care manifested by such person, the nature and extent of any efforts made by him to minimize or mitigate the effects of such release, and other appropriate factors.

"(B) The amount of any penalty assessed under this subsection against any responsible party under section 3041 for failure to comply with any order under section 3041 shall not exceed two and one-half times the amount of the costs of actions taken by the Administrator or by a State or local government, or both, under section 3041 with respect to the release concerned. Any such penalty shall be in addition to any costs recovered from such person pursuant to section 3071.

"(3) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty.

"(4) No civil penalty may be imposed under this section against any person for violation of an order under section 3041 unless such person is liable for costs under section 3071.

"b) Criminal Penalty.—Any person who willfully fails to comply with the notification requirements of subsection (a) of section 3031 or who violates section 3035 shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Any person who violates section 3035 (relating to destruction of records) shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

## "Subpart F—Assistance to States for Recovery of Cleanup Costs

### "ASSISTANCE TO STATES ATTORNEYS GENERAL

"SEC. 3071. The Administrator may make grants to State attorneys general for purposes of providing training and technical assistance to State employees engaged in litigation and other efforts to recover the costs of remedial action undertaken by the State at inactive hazardous waste sites and for purposes of otherwise assisting the State attorneys general in recovering such costs. Such grants shall be made in such manner and pursuant to such applications as the Administrator shall by rule prescribe. For purposes of this subsection, the term 'State attorney general' means the principal law enforcement officer of the State. There is authorized to be appropriated not more than $50,000,000 for each of the following fiscal years to carry out the purposes of this section: 1981, 1982, 1983, 1984, and 1985.".

(b) The following provisions of the Solid Waste Disposal Act are each amended by striking out "subtitle" in each place it appears and substituting "part": section 3001, 3002, 3003, 3004, 3005, 3006, 3009, and 3010.

(c) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting "Part 1—Standards and Permits for Hazardous Waste Managment" immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"Sec. 3021. Coverage of part.
"Sec. 3022. Definitions.

"Subpart B—Inventory, Priorities, and Monitoring

"Sec. 3031. Hazardous waste site inventory.
"Sec. 3032. Establishment of priorities.
"Sec. 3033. Monitoring of inactive sites.
"Sec. 3034. Immunity.
"Sec. 3035. Destruction of records.

"Subpart C—Hazardous Waste Response Authority

"Sec. 3041. Emergency response.
"Sec. 3042. State contribution.

"Subpart D—Hazardous Waste Response Fund

"Sec. 3051. Establishment of Fund.

"Subpart E—Prohibitions and Enforcement

"Sec. 3061. Enforcement.

"Subpart F—Assistance to States for Recovery of Cleanup Costs.

"Sec. 3071. Assistance to States' Attorneys General."

### STUDY OF HAZARDOUS WASTE SITING

SEC. 6. (a) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies, appropriate representatives from State and local governments, and representatives of nongovernmental entities, conduct a study of the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. The study shall include:

(1) an assessment of the current and projected treatment and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(2) an evalution of the appropriateness of a regional approach to siting and designating hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate or both, with similar hazardous waste management needs;

(3) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by non-governmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;

(4) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities; and

(5) an evaluation of the various options for overcoming obstacles to sitting new facilities including needed legislation, for implementing the most suitable option or options.

The Administrator shall report the results of the study to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate not later than one year after the date of the enactment of this Act.

(b) There is authorized to be appropriated not more than $300,000 to carry out the study required under this section.

### STUDY OF ADEQUACY OF FUNDING

SEC. 7. (a) The President shall submit to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate within six months after the end of each fiscal year, beginning one year after the date of the enactment of this Act, a report summarizing the recepits and disbursements during that year from the fund established pursuant to this Act. The report shall also describe the administration and functioning of the fund during the period covered and present any recommendations the President may have for improvement.

(b) Before January 1, 1984, the Administrator shall conduct a study, and submit to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate a comprehensive report on experience with the implemention of the amendments made by this Act, including, but not limited to an analysis of:

(1) whether the requirements set forth in the amendments are effective;

(2) the extent to which the fund established under the amendments is effective in enabling government to respond to and mitigate the effects of releases and threatened releases of hazardous waste;

(3) the cost of responding to, and the potential threat to public health or safety, posed by, hazardous waste remaining after actions taken pursuant to the amendments made by this Act; and

(4) State participation in the system of response, liability, and compensation established by such amendments.

In preparing the report under this subsection, the Administrator shall consult with appropriate Federal, State, and local agencies, affected industries and other interested parties. Based upon the analyses and consultation required by this subsection, the Administrator shall also include in the report any recommendation for legislative changes he may deem necessary for the better effectuation of the purposes of the amendments made by this Act, including but not limited to recommendations concerning authorization levels, State participation, liability and liability limits, and financial responsibility provisions.

### SUNSET PROVISIONS

SEC. 8. Unless authorized by Congress, the authority of the Administrator to inventory and clean up any inactive hazardous waste disposal site or to exercise any other authority conferred in this Act shall terminate five years after the date of enactment of this Act.

### LIMITATION ON AUTHORIZATIONS

SEC. 9. Authorizations of moneys to be appropriated under this Act shall be effective on October 1, 1980. Notwithstanding any other provision of this Act, authority to enter into contracts, to incur obligations, or to make payments under this Act shall be effective only to the extent, and in such amounts, as are provided in advance in appropriations Acts.

Amend the title so as to read as follows: "A bill to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and safety, to establish a Hazardous Waste Response Fund, and for other purposes.".

[NOTE: The author of the following amendment was not identified in the CONGRESSIONAL RECORD.]

—Strike all after the enacting clause and insert:

### SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Containment Act of 1980".

### INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this act, or in any amendment made by this Act, shall apply to oil, or other, pollution of navigable waters.

### FINDINGS

SEC. 3. The Congress hereby finds that—

(1) hazardous waste has been disposed of in a manner which may result in a significant danger to public health and safety;

(2) the exact location of many hazardous waste sites is unknown;

(3) cooperation by Federal, State, and local governments and private industry can assist in compiling an up-to-date inventory of the location, condition, and contents of existing hazardous waste sites;

(4) a systematic method of funding the cost-effective cleanup of dangerous hazardous waste sites is necessary to protect public health and safety.

### AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 4. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

## "PART 2—ASSISTANCE TO STATES FOR INACTIVE HAZARDOUS WASTE SITES

### "COVERAGE OF PART

"SEC. 3021. The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

### "PURPOSES

"SEC. 3022. (a) IN GENERAL.—The purposes of this part are to provide, through the use of Federal financial and technical assistance, for the establishment and implementation of effective State programs to assure the cleanup and containment of inactive hazardous waste sites by—

"(1) carrying out investigation and evaluation of the inactive hazardous waste disposal sites in the State;

"(2) establishing cleanup priorities among the sites, based on the danger they present to public health and safety; and

"(3) undertaking, based upon such priorities, the necessary remedial action for the protection of public health and safety from the hazardous waste associated with such sites.

"(b) RECOVERY OF CLEANUP COSTS.—It is also a purpose of this part to assist the States in recovering, from persons liable under otherwise applicable law, the costs of State cleanup and containment activities with respect to inactive hazardous waste sites.

### "DEFINITION

"SEC. 3023. For purposes of this part, the term 'inactive hazardous waste site, means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(1) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(2) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under section 3005 (including subsection (e) thereof) is required.

### "FORMULA GRANTS

"SEC. 3024. (a) STATE PLAN.—Each State may, not later than 90 days after the date of the enactment of the Hazardous Waste Containment Act of 1980, submit to the Administrator a plan—

"(1) providing for the discovery and investigation by the State of inactive hazardous waste sites;

"(2) providing for the evaluation by the State of the threat to public health and safety posed by such sites and establishing cleanup and containment priorities among those sites which present, or may present, a substantial threat to public health and safety;

"(3) containing proposed methods and criteria for determining the appropriate emergency response to, containment of, and other remedial measures to be carried out for, releases or threatened releases of hazardous waste from inactive hazardous waste sites where such releases or threatened releases pose a substantial danger to public health and safety;

"(4) setting forth appropriate roles and responsibilities for Federal, State, and local governments and for interstate and nongovernmental entities, in carrying out the plan; and

"(5) establishing an active and effective program for recovering, from persons liable under otherwise applicable law, the costs incurred by the State in the cleanup and containment of inactive hazardous waste sites.

The provisions included in the plan under paragraph (3) shall provide that the State shall have the primary responsibility for carrying out the plan. The provisions included in the plan under paragraph (5) shall insure that the State will have sufficient investigative powers, financial resources, and legal expertise to recover the maximum feasible amount of cleanup and containment expenses incurred by the State.

"(b) EPA APPROVAL.—The Administrator shall approve a State plan described in subsection (a) and submitted under this section unless he determines that the plan—

"(1) does not comply with the requirements of subsection (a) or is otherwise generally inconsistent with the purposes of this part; or

"(2) would not result in a cost-effective use of Federal funds to be made available to the State under this section.

Any State may submit to the Administrator a modification of any State plan described in subsection (a), and any such modification shall be approved by the Administrator unless he makes the determination referred to in paragraph (1) or (2) of this subsection. Each State having a plan approved under this section shall be eligible for grants under subsection (c) unless the Administrator suspends such eligibility on the basis of his determination that the State is not carrying out the plan in good faith or has not properly used prior grants under subsection (c).

"(c) GRANTS.—Upon the application of any eligible State (as determined under subsection (b)), the Administrator shall make grants to such State to assist the State in carrying out the State plan approved under this section. Such grants shall be made not more frequently than annually and shall be allocated among such States on the basis of a formula based on population density, on the annual hazardous waste generators report required under regulations prescribed under this subtitle, and on the annual report for facilities that treat or store hazardous waste required under regulations under this subtitle. The Administrator shall, by rule, prescribe such formula not later than 60 days after the date of the enactment of the Hazardous Waste Containment Act of 1980. For any fiscal year after the first fiscal year in which a grant is made to a State under this section grants shall be made by the Administrator to any State which applies for such a grant and certifies that the State plan approved under this section is being implemented.

### "SUPPLEMENTAL GRANTS

"SEC. 3025. (a) GUIDELINES.—The Administrator shall promulgate guidelines for making supplemental grants to eligible States (as determined under section 3024) for purposes of assisting such States in undertaking remedial action with respect to inactive hazardous wastes sites. Such guidelines shall provide that the supplemental grants shall be made only for purposes of addressing emergency situations or for purposes of assisting States which have a disproportionate number of inactive hazardous waste sites which pose substantial threats to public health or safety. The guidelines shall provide for the allocation of supplemental grants under this section among the eligible States on the basis of the Administrator's determination as to the relative amounts required to be expended by the State for cleanup and containment of inactive hazardous waste sites, the significance of the threats to public health and safety posed by such sites, and the ability of the State to undertake remedial action without such supplemental Federal assistance.

"(b) GRANTS.—Upon the application of any eligible State (as determined under section 3024), the Administrator may make a grant to such State under this section in accordance with the guidelines prescribed under subsection (a). Any grant made to a State under this section in a fiscal year after the first fiscal year in which any grant was made to such State under this section or section 3024 shall be based upon such guidelines and on the Administrator's determination that the State has acted properly in its expenditure of funds made available to the State under this section and section 3024 in prior fiscal years.

### "TECHNICAL ASSISTANCE

"SEC. 3026. The Administrator shall undertake a program of (1) research with respect to hazardous waste management and (2) providing training and technical assistance to State officers and employees engaged in hazardous waste management activities. Such program shall include research, training, and technical assistance with respect to—

"(A) the evaluation of hazardous waste associated with inactive hazardous waste sites; and

"(B) emergency reponse actions which may be taken with respect to releases or potential releases of hazardous waste.

For purposes of the program under this section, the Administrator shall develop equipment, manuals, and other materials which will have a wide application to State programs for cleanup and containment of inactive hazardous waste sites.

### "ASSISTANCE TO STATE ATTORNEYS GENERAL

"SEC. 3027. The Administrator may make grants to State attorneys general for purposes of providing not more than 50 percent of the costs of training and technical assistance for State employees engaged in litigation and other efforts to recover the costs of remedial action undertaken by the State at inactive hazardous waste sites and for purposes of otherwise assisting the State attorneys general in recovering such costs. Such grants shall be made in such manner and pursuant to such applications as the Administrator shall by rule prescribe. For purposes of this subsection, the term 'State attorney general' means the principal law enforcement officer of the State.".

### "AUTHORIZATION OF APPROPRIATIONS

"SEC. 3028. (a) GRANTS.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of making grants to the States under section 3024 and section 3025:

"(1) $75,000,000 for the fiscal year 1981;
"(2) $150,000,000 for the fiscal year 1982;
"(3) $150,000,000 for the fiscal year 1983;
"(4) $75,000,000 for the fiscal year 1984; and
"(5) $50,000,000 for the fiscal year 1985.

Not less than 70 percent of the amounts appropriated under this section for any fiscal year may be used only for grants under section 3024.

"(b) RESEARCH AND TECHNICAL ASSISTANCE.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of research and technical assistance under section 3026:

"(1) $10,000,000 for the fiscal year 1981;
"(2) $15,000,000 for the fiscal year 1982;
"(3) $15,000,000 for the fiscal year 1983;
"(4) $5,000,000 for the fiscal year 1984; and
"(5) $5,000,000 for the fiscal year 1985.

"(c) ASSISTANCE TO STATE ATTORNEYS GENERAL.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of recovery assistance under section 3027:

"(1) $10,000,000 for the fiscal year 1981;
"(2) $10,000,000 for the fiscal year 1982;
"(3) $10,000,000 for the fiscal year 1983;
"(4) $10,000,000 for the fiscal year 1984; and
"(5) $10,000,000 for the fiscal year 1985.".

(b) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—ASSISTANCE TO STATES FOR INACTIVE HAZARDOUS WASTE SITES

"Sec. 3021. Coverage of part.
"Sec. 3022. Purposes.
"Sec. 3023. Definition.
"Sec. 3024. Formula grants.
"Sec. 3025. Supplemental grants.
"Sec. 3026. Technical assistance.
"Sec. 3027. Assistance to States attorneys general.
"Sec. 3028. Authorization of appropriations.".

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[From the Congressional Record, Sept. 19, 1980, pp. E4473-E4474]

## H.R. 7020

● Mr. DANNEMEYER. Mr. Speaker, as a member of one of the committees which had jurisdiction over H.R. 7020, I can certainly appreciate the concern that has prompted the reporting of this legislation. Moreover, it is impossible not to sympathize with people who have bought homes in good faith, as they did at Love Canal in New York, only to find themselves exposed to noxious odors and health hazards through no fault of their own. The choice before us, is therefore, not between acting and not acting; rather it is a matter of how best to solve what everyone agrees is a serious problem.

Were all these inactive waste sites identified, the best means of cleanup known, and an emergency response plan formulated, then the next step might logically be to decide whether $600 million, or $1.2 billion, or whatever should be spent on the cleanup itself. But all this information is not known; in fact, collecting it is one of the major purposes of this bill. Moreover, and this is most important, the case of Federal preemption in the field of hazardous waste cleanup has yet to be made; instead, growing evidence that private enterprise could handle the cleanup better and quicker suggests that we should await the results of the studies before letting the Federal Government spend a lot of money and throw its weight around.

In that regard, I should note that the siting study portion [**Sec. 301(d)**] of H.R. 7020 not only provides for private participation in the preparation of the study but it calls on the EPA Administrator to solicit and analyse proposals from private enterprise to build and operate hazardous waste management facilities on a profit-making basis. Lest one think such an idea preposterous, let me point out that, just last May, the Gulf Coast Authority, down in the Houston area, solicited bids from 28 firms worldwide to build and operate a waste disposal facility capable of handling 520,000 tons of waste per year, or 20 to 25 percent of wastes produced each year in Harris County. No less than 22 of the firms submitted bids, 11 of which met all the established criteria. Finally, one firm—I.T. Corporation of California—was selected to build and operate three high-temperature incinerators that will burn organic wastes while another—Stablex, Inc.—was selected to deal with the inorganic wastes. Both firms will build and operate these facilities using their own capital; the Gulf Coast Authority—GCA—will provide the land and, in exchange, will receive a percentage of the revenues the facilities generate. Not a dime of taxpayers money will be involved.

But how does this affect, or even relate to, the cleanup of inactive sites you ask? Well, let me answer that several ways. First of all, these incinerators operate most efficiently and profitably when dealing with a maximum volume of waste so, if the volume of current waste slacks off, there is some benefit to be derived from feeding in waste from inactive sites. Moreover, some of the steam generated by the incineration process can be converted to power and sold so, to the extent the burning of abandoned wastes adds to the steam produced, the cost of picking up those wastes is further offset. Of course, these two factors may not be enough to compensate for the cost of moving hazardous wastes from an abandoned site to the incinerators entirely, and the difference may have to be made up by the taxpayers, but surely paying the difference is a whole lot cheaper than footing the bill for both shipping and disposal of these wastes as H.R. 7020 will have us do. Also, there is absolutely no reason why some other jurisdiction, any jurisdiction, that wanted to set up a similar operation could not require, as part of the bid criteria or the contract itself, the successful bidder to arrange for cleanup of neighboring abandoned sites as partial payment for the leasehold privileges which he is to enjoy.

All of which brings us down to the bottom line, which is—if private enterprise is willing to dispose of over one-half million tons a year at no cost to the taxpayer, the Harris County, Tex., because it thinks it can make money, then it should be interested in doing the same thing for hazardous wastes elsewhere. And if private enterprise is, in fact, so inclined then why do we need an expensive new Federal bureaucracy that will cost millions, if not billions each year? As history will show, bureaucrats have a vested interest in managing a problem, not solving it. Take PCB's for example. For years, EPA has been trying to get them cleaned up with marginal success; now Goodyear Tire & Rubber and SunOhio Corp., both private firms, think they have found ways to convert them to common table salt.

By now, I am sure you are thinking, if it is so easy, why have these privately operated high-temperature—2500°F—incinerators not been used before, or why have I not heard of them before this? Those are good questions, but the fact of the matter is at least three of these incinerators are already in operation here in the United States and more are operating in Europe. As for the lack of publicity, it has only been in the last few years that enough has become known about the dangers posed by hazardous waste sites to make them newsworthy. But, now all that is changing; in fact, last year, the Oversight Subcommittee of the Commerce Committee held a series of hearings focused on both the dangers and the options for cleanup. During one of those hearings, one witness, the secretary of Kentucky's Department of Natural Resources and Environmental Protection, went as far as to suggest that private firms, using high temperature incinerators, could dispose of hydrocarbon based wastes at inactive sites without receipt of tax dollars. As it happens, the witness could have been articulating a phase one blueprint for what is now being tried in Harris County, Tex.

Of course, there will be some problems with the private enterprise approach. For one thing, there will always be those who want such a facility anywhere but near them. For another, there is the problem of obtaining a sufficient volume of waste to keep such a facility running at optimum efficiency and profitability. For a third, incineration will only take care of 70 to 80 percent of the wastes at these abandoned sites; other means will have to be found to deal with the remainder. But these are all problems that can be overcome and, to a large degree, they would have to be dealt with anyway if EPA were to call the shots. So, what it really boils down to is this—do we want superfund and superbureaucracy at the Federal level, or do we want to see if private enterprise, working with local officials, can do the job in less taxing manner?

When H.R. 7020 comes to the floor, I plan to offer an amendment in the nature of a substitute that will given life to this second option. Basically, what it does is authorize $40 million out of general revenues to complete the four studies called for in the Commerce Committee version of H.R. 7020—that is: First, the inventory of sites, second, the siting study—including the solicitation and analysis of proposals from private enterprise to operate hazardous waste management facilities on a profitmaking basis **[Sec. 301(d)]**, third, the funding study—which should be influenced by the results of the siting study **[Sec. 301(a)]**, and the preparation of a national response plan—in 18 months instead of 24 **[Sec. 105]**. What it does not do is provide for the so-called superfund, and a sweeping grant of authority to the EPA Administrator that goes with it, on the grounds that a decision on these items should wait until the studies are complete and the facts necessary for sound decisionmaking, are available. In short, this is a look before you leap approach and, in these times of rising popular protest against inflation and excess or unnecessary Government regulation, I urge my colleagues to give it their support.●

[NOTE: The amendment was printed in the CONGRESSIONAL RECORD of September 17, 1980 beginning on p. H9060 and again during debate on September 23, 1980. It appears in volume 2, at p. 328.]

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[From the Congressional Record, Sept. 17, 1980, pp. E4439-E4440]

## SOLOMON SUPERFUND AMENDMENT

● Mr. SOLOMON. Mr. Speaker, today I have inserted in the RECORD an amendment to the superfund legislation, H.R. 7020, which is intended to assist in the cleanup of hazardous waste sites.

I do have some reservations concerning the superfund bill.

My major concern about the bill as it is currently drafted is that it encourages the proliferation of storage landfills and the expansion of existing landfills rather than the development of high technology facilities which would destroy or neutralize toxic wastes.

The construction of high technology facilities to reclaim, incinerate, or neutralize the chemical properties of hazardous waste is the surest way, in fact, the ony way to assure an environment protected from the potential future hazards of chemical waste.

H.R. 7020 concerns only existing inground hazardous waste sites and provides funds only for remedial work on suspect landfills. It does not at all apply itself to the construction of high technology facilities which would reclaim, incinerate, or neutralize toxic materials thus making it unnecessary to put substances into the ground that are still toxic and leachable. By avoiding or failing to address the very important and necessary method for the future control of such waste, this bill and the Congress imply that the best way to deal with hazardous waste is to bury it in the ground.

I do not agree.

If we are to properly control toxic materials, it is imperative that we attack the problem from two angles. Certainly the need to make funds available for cleaning up dangerous landfills is vital. With my amendment, the bill also provides us with the perfect mechanism for avoiding similar mistakes in the future.

My amendment would earmark a certain percentage of the fund to be used as matching grants to States which are willing to construct the facilities for the environmentally sound handling of toxic waste **[Sec. 221]**.

In short, my amendment explicitly prohibits the use of such earmarked funds for the building or operation of landfills.

At present the only method available to most generators of hazardous waste is landfills. What Congress is proposing by enacting the superfund and what it is encouraging through its present tax-exempt limitation on hazardous waste facilities will result in a proliferation of landfills.

As I have already pointed out, this legislation will actually increase the number of landfills across the country and will expand existing landfills that already pose a threat to this Nation's drinking water. Over 50 percent of all Americans depend on ground water for their drinking supply and the creation of more landfills will jeopardize this water supply.

Senator John B. Daley, chairman of the New York State Senate's Hazardous Waste Committee, fully endorses this amendment. He has written:

> It would appear to me that the Federal Government would be wiser indeed if it took strong steps to encourage the States to immediately begin to look at the final answer to hazardous waste and this means the destruction or neutralization, rather than the storage of waste in secure landfills.

I would also like to point out that my amendment would take effect 2 years from the date of enactment of the superfund. In this way the primary purpose of the legislation—to provide the authorities with a way to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and the environment—would not be adversely affected by my amendment.

There is growing support for my amendment from both the environmental and economic sectors of this country and I hope you will join with me in supporting it when H.R. 7020 reaches the House floor.●

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[From the Congressional Record, Sept. 17, 1980, p. H9062]

By Mr. SOLOMON: [Sec. 221]

—Page 36, Line 21, after "for" insert "(1)".

Page 36 line 24, before the period insert: ", or (2) in the case of fiscal years beginning after September 30, 1981, assistance under section 3012 for the construction of State or regional hazardous waste facilities. Not more than 25 percent of the amount credited to the Fund for any such fiscal year may be used for purposes of providing assistance under section 3012".

Page 50, after line 11, insert of the following:

(c) Subtitle C of the Solid Waste Disposal Act is amended by adding the following new section at the end thereof:

"ASSISTANCE FOR STATE OR REGIONAL FACILITIES

"SEC. 3012. (a) GRANT AUTHORITY.—After September 30, 1981, the Administrator is authorized to make grants to any State or interstate agency for the construction of publicly owned or State permitted facilities for the neutralization, incineration, or recycling of hazardous waste. No amount of any such grant may be used for the construction of any secure landfill or other facility for the storage of hazardous waste. No amount of any such grant may be used for the construction of any secure landfill or other facility for the storage of hazardous waste for periods in excess of one year.

"(b) FEDERAL SHARE.—The amount of any grant for any facility under this section shall not exceed 50 percent of the cost of such facility.

"(c) LIMITATIONS, REQUIREMENTS, AND CONDITIONS.—(1) Each applicant for assistance under this section shall submit to the Administrator for his approval such plans, specification, and estimates for the proposed facility as the Administrator deems necessary.

"(2) Before making any grant under this section, the Administrator shall determine that—

"(A) the proposed facility will meet the requirements of this subtitle; and

"(B) the applicant for such grant has made provisions satisfactory to the Administrator for assuring payment of the non-Federal share of the costs of such facility and for assuring proper and efficient operation.

"(d) ALLOTMENT.—Grants under this section shall be allotted annually by the Administrator among the applicants in accordance with regulations promulgated by him. Such regulations shall provide for the annual allocation of grants among States and regions in proportion to the relative amounts of hazardous waste generated in each such State and region during an appropriate prior annual period.".

Page 50, after line 15, insert:

"SEC. 3012. ASSISTANCE FOR STATE OR REGIONAL FACILITIES.".

## By Mr. WYDLER: [Secs. 104 and 105]

—Strike page 12, line 3 through page 13, line 3 and insert the following new paragraph:

"(d)(1) The Administrator shall establish, within the Environmental Protection Agency, an Office of Remedial Research, to be headed by a Deputy Assistant Administrator of the Environmental Protection Agency. The Office of Remedial Research shall review the inventories submitted to the Administrator under paragraph (b) or compiled by the Administrator under paragraph (c) and publish a report on dumpsites in the United States which contain significant volumes of toxic chemical and hazardous wastes.

"(2) The report shall include—

"(A) an enumeration of all dumpsites which (i) contain toxic chemicals or hazardous waste in sufficient amounts to present a clear danger to public health, and (ii) were closed before the date of enactment of this act setting forth in such enumeration a description of the location of, type of waste contained in, and specific danger presented by each dumpsite;

"(B)(1) a listing by State of the numbers of active and inactive hazardous waste sites;

(2) an analysis of the numbers of various types of sites and the numbers of site and volumes of waste contained in them by industry category;

(3) A list of the total number of inactive sites at which remedial actions are likely to be required under this part; and

(4) a general description of the risk of harm to public health and the environment posed by each of the sites listed in (3).

"(C) an assessment of the status of technology generally applied to the disposal of toxic chemical and hazardous waste;

"(D) recommendations as to what technology should be used to clean up the dumpsites enumerated under subparagraph (A);

"(E) a description of problems at specific dumpsites requiring research and development for their resolution;

"(F) a plan for research, development, and demonstration respecting the findings of the study, including recommendations regarding the appropriate government and private sector rules under the plan; and

"(G) legislative recommendations resulting from the study to appropriate committees of Congress.

"(3) The Administrator shall submit the report under subparagraph (2) to the Committee on Environment and Public Works and the Committee on Energy and Natural Resources of the Senate and to the Committee on Interstate and Foreign Commerce and the Committee on Science and Technology of the House of Representatives within two years of the date of enactment of the Hazardous Waste Containment Act of 1980. The Administrator shall update this inventory and submit a report containing the updated inventory, together with an analysis thereof, to the aforementioned committees annually after the first transmittal.

"(4)(A) There shall be created an independent Toxic Chemical and Hazardous Waste Advisory Board, comprised of industry, academic, and Government toxicologists, which will review the findings and recommendations in the report. The members of the Advisory Board shall be named by the Director of the Office of Science and Technology Policy.

"(B) The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Advisory Board in carrying out this subsection and shall provide such information as the Advisory Board deems necessary to carry out this subsection.

"(C) All data and support research which was used in the compilation of the Administrator's report on toxic chemical and hazardous wastes shall be made available to the Advisory Board.

"(D) All members of the Advisory Board shall be entitled to reimbursement for travel and other expenses actually incurred, including a per diem allowance in accordance with section 5703(b) of title 5, United States Code, while engaged in performing service as such members.

"(5) There is authorized to be appropriated not to exceed $15,000,000 for the fiscal year 1982 to carry out this paragraph."

On page 21, line 9, after (B) strike "Not" and add the following: "In fiscal year 1981, not".

On page 30, following line 16, add the following new paragraph:

"(5) necessary research and development activities respecting toxic chemical and hazardous waste;"

Renumber the following paragraphs.

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[From the Congressional Record, Sept. 18, 1980, p. H9148]

## By Mr. MILLER of California: [Secs. 104(f) and 301(f)]

—Page 35, after line 7 insert:

"WORKER SAFETY

"SEC. 3044. (a) As promptly as practicable after the date of the enactment of the Hazardous Waste Containment Act of 1980, the Secretary of Labor shall promulgate occupational safety and health standards under the Occupational Safety and Health Act of 1970 to assure safe working conditions for employees involved in relocation, containment, clean-up or other remedial actions undertaken with respect to hazardous waste sites. Such standards shall contain procedures requiring employers to notify their employees of the special dangers associated with exposure to the hazardous substances located at any hazardous waste site at which such employee is employed. The rules promulgated as provided in this subsection shall not contain an exemption from the requirements of such rules for any employer on the basis of the number of employees employed by the employer or on any other basis.

"(b) No funds appropriated pursuant to this or any other Act may be used in the relocation, containment, cleanup, or other remedial action with respect to any hazardous waste site unless the Administrator determines that such action will be carried out in a manner consistent with the rules promulgated under subsection (a) of this section.

"(c) The provisions of the Occupational Safety and Health Act of 1970 shall apply for purposes of the standard required to be promulgated as provided in this section, and the terms 'employee' and 'employer' shall, for purposes of this section, have the same meanings as when such terms are used in the Occupational Safety and Health Act of 1970.".

Page 51, before line 1, after the item relating to section 3043 insert:

"Sec. 3044. Worker safety."

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[From the Congressional Record, Sept. 19, 1980, p. H9225]

## By Mr. SOLOMON: [Sec. 221]

Page 36, 21, after "for"insert "(1)"

Page 36, line 24, before the period insert:", or (2) in the case of fiscal years beginning after September 30, 1981, assistance under section 3012 for the construction of State or regional hazardous waste facilities. Not more than 25 percent of the amount credited to the Fund for any such fiscal year may be used for purposes of providing assistance under section 3012".

Page 50, after line 11, insert the following:

(c) Subtitle C of the Solid Waste Disposal Act is amended by adding the following new section at the end thereof:

"ASSISTANCE FOR STATE OR REGIONAL FACILITIES

"SEC. 3012. (a) GRANT AUTHORITY.—After September 30, 1981, the Administrator is authorized to make grants to any State or interstate agency for the construction of publicly owned or State permitted facilities for the neutralization, incineration, or recycling of hazardous waste. No amount of any such grant may be used for the construction of any secure landfill or other facility for the storage of hazardous waste for periods in excess of one year.

"(b) FEDERAL SHARE.—The amount of any grant for any facility under this section shall not exceed 50 percent of the cost of such facility.

"(c) LIMITATIONS, REQUIREMENTS, AND CONDITIONS.—(1) Each applicant for assistance under this section shall submit to the Administrator for his approval such plans, specification, and estimates for the proposed facility as the Administrator deems necessary.

"(2) Before making any grant under this section, the Administrator shall determine that—

"(A) the proposed facility will meet the requirements of this subtitle; and

"(B) the applicant for such grant has made provisions satisfactory to the Administrator for assuring payment of the non-Federal share of the costs of such facility and for assuring proper and efficient operation.

"(d) ALLOTMENT.—Grants under this section shall be allotted annually by the Administrator among the applicants in accordance with regulations promulgated by him. Such regulations shall provide for the annual allocation of grants among States and regions in proportion to the relative amounts of hazardous waste generated in each such State and region during an appropriate prior annual period.".

Page 50, after line 15, insert:

"Sec. 3012. Assistance for State or regional facilities.".

Page 67, line 23, after "for" insert "(1)".

Page 68, line 6, before the period insert: ", or (2) in the case of fiscal years beginning after September 30, 1981, assistance under section 3012 for the construction of State or regional hazardous waste facilities. Not more than 25 percent of the amount credited to the Fund for any such fiscal year may be used for purposes of providing assistance under section 3012".

## AMENDMENTS TO H.R. 85

[From the Congressional Record, Aug. 25, 1980, pp. H7923-H7926]

### AMENDMENTS TO "SUPERFUND" BILLS

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. Ullman) is recognized for 5 minutes.

● Mr. **ULLMAN**. Mr. Speaker, last week, the Committee on Ways and Means agreed to a substitute for the original committee amendment to H.R. 85 (the Comprehensive Oil Pollution Liability and Compensation Act) reported on June 20, 1980.

This committee substitute reflects the result of conversations between members of the Ways and Means Committee and the other committees that have jurisdiction over various aspects of this bill. In its original amendment to the bill, the Ways and Means Committee imposes specific excise taxes on oil, petroleum products, petrochemical feedstocks, and certain organic substances.

The revenues generated by these taxes are placed in two trust funds to provide for certain purposes under the act. The tax and trust fund provisions reflect concerns of the committee regarding matters within its jurisdiction—including uses of the trust fund assets. The Committee on Merchant Marine and Fisheries and the Committee on Public Works expressed a number of reservations about the structure of the taxes and trust funds provided for in the Ways and Means amendment.

The committee substitute is a compromise of the various concerns expressed by the three committees working on this bill. Its provisions are the same as the original Ways and Means amendment except for four specific changes.

First, the committee substitute requires the Treasury to issue regulations under which any petrochemical feedstock, a principal use of which is use as a fuel, will be subject to the chemical tax only when it is used other than as a fuel [Sec. 211]. For example, the committee understands that more than four-fifths of all domestic consumption of methane and propane is for fuel purposes. Therefore, those feedstocks would be treated as one of the tax's specified petrochemical feedstocks only when used for nonfuel purposes.

Second, the committee substitute provides that until September 30, 1981, each of the two trust funds established by the amendment will be permitted to borrow a maximum of $75 million from the Treasury [Sec. 223(c)]. Such loans may be made only to the extent necessary to accomplish the purposes of the fund. Loans to the trust funds and interest thereon will be repaid when the Secretary determines that moneys are available in the funds for that purpose. The funds will be required to pay interest to the Treasury at the rate earned by marketable obligations of the United States of comparable maturity.

Third, the committee substitute provides that the trust funds and authority to make payments from them will not expire on September 30, 1985. Thus, either trust fund could continue to operate as long as a balance were available in the fund. However, the taxes imposed under the act will not apply after September 30, 1985 [Sec. 211].

Finally, the committee substitute allows the funds to be used to pay for four categories of claims (the fourth is defined more broadly than under the original committee amendment) [Sec. 221(c)]:

Removal costs;

Injury to, or destruction of, real or personal property;

Injury to, or destruction of, natural resources; and

Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources, if the claimant derives at least 25 percent of his gross income from activities which utilize the injured or destroyed property resource. Only losses sustained during the first 2 years following the initial loss are compensable.

Mr. Speaker, H.R. 85 is a bill of vital importance. Virtually every week we read of yet another oil or chemical spill. This bill will provide an assured source of funds for emergency response to these spills and will create new rights for their victims. I urge my colleagues to support this measure when it comes to the floor.

Mr. Speaker, I ask unanimous consent that the text of the committee substitute be printed in the RECORD and that the text of two committee amendments to the original Ways and Means amendments on H.R. 85 and H.R. 7020 also appear in the Record. The last two amendments relate to the taxation of feedstocks used as fuels.

[NOTE: The committee substitute to title V is identical to title V in Mr. Breaux's amendment in the nature of a substitute and may be found at p. 986 of volume 2.]

### AMENDMENT TO THE WAYS AND MEANS COMMITTEE AMENDMENT TO H.R. 85

Insert after section 4652(a)(2) of the Internal Revenue Code of 1954, as proposed by the Committee amendment, the following:

"(B) SPECIAL RULE FOR CERTAIN SUBSTANCES.—Under regulations prescribed by the Secretary, any substance listed in subparagraph (A) for which a principal use is used as a fuel shall be treated as a specified petrochemical feedstock only if it is used otherwise than as a fuel (and, for purposes of section 4651(a), the person so using it shall be treated as the manufacturer thereof).

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[From the Congressional Record, Aug. 27, 1980, p. H8029]

By Mr. BREAUX:

[NOTE: The amendment is identical to that offered by Mr. Breaux in debate of September 19, 1980, pp. 951 and 976 of volume 2.]

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[From the Congressional Record, Sept. 9, 1980, pp. H8640-H8641]

### AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 85

**By Mr. WYATT:**

(Amendment to the amendment to H.R. 85 offered by Mr. Breaux.)
—Page 37, after line 14, insert the following:

IXTOX I OILSPILL

SEC. 114. (a) Claims may be asserted by any United States claimant against the Oil Pollution Trust Fund established in section 521 of this Act for any compensable damage (within the meaning of section 531 of this Act) incurred by such claimant and arising out of, or directly resulting from, oil pollution caused by the discharge of oil on or after June 3, 1979, in connection with the blowout of Ixtoc I, Bay of Campeche, Mexico, on June 3, 1979.

(b)(1) Compensation shall be provided by the Secretary from amounts appropriated pursuant to this subsection to any State or political subdivision thereof for any loss of tax revenue for a period not to exceed one year due to injury to real or personal property arising out of, or directly resulting from, oil pollution caused by the discharge of oil on or after June 3, 1979, in connection with the blowout of Ixtoc I, Bay of Campeche, Mexico, on June 3, 1979. Claims for compensation under this subsection shall be submitted to the Secretary, in such manner and form as the Secretary may prescribe.

(2) There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(c) The provisions of this title, other than those provisions determined by the Secretary to be inconsistent with this section, shall apply to claims under subsections (a) and (b).

(d)(1) Except as provided in paragraphs (2) and (3) of this subsection, no United States claimant shall be eligible to receive compensation under subsection (a) or (b) of this section for any damage referred to in such subsection for which such claimant has not been compensated if such claimant has presented a claim of compensation for such damage under any other Federal or State law.

(2) Any United States claimant who presents a claim for any damage referred to in subsection (a) or (b) of this section, under any other Federal or State law, which is not reduced to judgment before the date of enactment of this Act may be eligible to receive compensation under such subsection. Presentation by such claimant of a claim for compensation under subsection (a) or (b) of this section shall be irrevocable, shall constitute the exclusive relief which may be granted with respect to the damage for which such claim is presented, and shall constitute a waiver by such claimant of any right to relief to which such claimant may be entitled under such other Federal or State law with respect to such damage.

(3) Any United States claimant who presents a claim for any damage referred to in subsection (a) or (b) of this section, under any other Federal or State law, which is reduced to judgment before the date of the enactment of this Act may be eligible to receive compensation under such subsection. Such claimant may present such judgment to the Secretary. If the Secretary determines that such claimant is entitled to receive compensation under either such subsection, then the Secretary shall offer to pay such compensation, not to exceed the amount of any award made in such judgment, in satisfaction of such judgment. Acceptance of such offer by such claimant shall constitute full satisfaction of such judgment with respect to each claim for any damage which is referred to in subsection (a) or (b) of this section and which is merged in such judgment.

(e) The Secretary is authorized to make a grant in an amount not to exceed $6,000,000 to the Texas Parks and Wildlife Department of the State of Texas for the construction and operation of a saltwater fish hatchery for the purpose of restoring the red drum fishery which was damaged by oil pollution caused by the discharge of oil in connection with the blowout of Ixtoc I, Bay of Campeche, Mexico, on June 3, 1979.

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[From the Congressional Record, Sept. 15, 1980 p. H8831]

**By Mr. LIVINGSTON:**

[NOTE: The amendment is identical to that offered by Mr. Livingston in debate of September 19, 1980. See p. 1001 of volume 2.]

**By Mr. STUDDS: [Sec. III and 221(c)]**

—Page 9, line 15, strikeout "and".

Page 9, line 21, strike out the period and insert in lieu thereof a semicolon.

Page 9, after line 21, insert the following:

(5) loss of use of real or personal property:

(6) loss of use of natural resources; and

(7) loss of tax revenue for a period of one year due to injury to real or personal property.

Page 10, line 10, strike out "item 2" and insert in lieu thereof "items 2, 5, and 6".

Page 11, line 1, strike out "4" and insert in lieu thereof "7".

Page 12, line 7, strike out "and".

Page 12, line 11, strike out the period and insert in lieu thereof "; and".

Page 12, after line 11, insert the following:

(7) under item 7, by any State or political subdivision thereof.

—Page 48, line 7, strike out "and".

Page 48, line 13, strike out the period and insert in lieu thereof a semicolon.

Page 48, after line 13, insert the following:

"(E) loss of use of real or personal property;

"(F) loss of use of natural resources; and

"(G) loss of tax revenue for a period of one year due to injury to real or personal property.

Page 49, line 3, strike out "item (B)" and insert in lieu thereof "items (B), (E), and (F)".

Page 49, line 21, strike out "(D)" and insert in lieu thereof "(G)".

Page 50, line 13, strike out "and".

Page 50, line 22, strike out the period and insert in lieu thereof "; and"

Page 50, after line 22, insert the following:

"(G) under item (G) of paragraph (1) by any State or political subdivision therof.

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[From the Congressional Record, Sept. 16, 1980, p. H8928]

### By Mr. Peyser: [Sec. 111]

—Page 56, after line 15, insert the following:

"(5) In addition to the processing and settling of claims under subsection (s) of this section, the fund referred to in subsection (k) of this section is available to pay for removal costs for the removal of in-place toxic pollutants which are present in the navigable waterways of the United States on the effective date of this paragraph, but only to the extent that the removal of such pollutants is approved in advance by the Administrator. Not to exceed $30,000,000 per fiscal year shall be available from the fund referred to in subsection (k) of this section for purposes of this paragraph. For purposes of section 532 of the Environmental Revenue Act of 1980, the payment of any amount under this paragraph shall not be deemed to be a payment for a claim for removal costs.

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[From the Congressional Record, Sept. 17, 1980, p. H9060]

### By Mr. Donnelly: [Sec. 108(b)]

—On page 21, on line 12, delete "water capacity of more than 3,500 gallons" and substitute "oil capacity of more than 4,200 gallons".

### By Mr. Peyser: [Sec. 111]

(Amendment to the amendment offered by Mr. Breaux.)

—Page 56, after line 15, insert the following:

"(5) In addition to the processing and settling of claims under subsection (s) of this section the fund referred to in subsection (k) of this section is available to pay for removal costs for the removal of in-place toxic pollutants which are present in the navigable waterways of the United States on the effective date of this paragraph, but only to the extent that the removal of such pollutants is approved in advance by the Administrator. Not to exceed $10,000,000 per fiscal year shall be available from the fund referred to in subsection (k) of this section for purposes of this paragraph. For purposes of section 532 of the Environmental Revenue Act of 1980, the payment of any amount under this paragraph shall not be deemed to be a payment for a claim for removal costs.

[From the Congressional Record, Sept. 18, 1980, p. H9147]

By Mr. WYATT:

—Page 37, after line 14, insert the following:

IXTOC I OILSPILL

SEC. 114. (a) Claims may be asserted by any United States claimant against the Oil Pollution Trust Fund established in section 521 of this Act for any compensable damage (within the meaning of section 531 of this Act) incurred by such claimant and arising out of, or directly resulting from, oil pollution caused by the discharge of oil on or after June 3, 1979, in connection with the blowout of Ixtoc I, Bay of Campeche, Mexico, on June 3, 1979; *Provided, however,* That the obligations of the Oil Pollution Trust Fund to carry out this subsection shall not exceed $75 million. If compensable damages exceed $75 million, they shall be reduced proportionally as determined by the Secretary.

(b) The provisions of this title, other than those provisions determined by the Secretary to be inconsistent with this section, shall apply to claims under subsection (a).

(c)(1) Except as provided in paragraphs (2) and (3) of this subsection, no United States claimant shall be eligible to receive compensation under subsection (a) of this section for any damage referred to in such subsection for which such claimant has not been compensated if such claimant has presented a claim for compensation for such damage under any other Federal or State law.

(2) Any United States claimant who presents a claim for any damage referred to in subsection (a) of this section, under any other Federal or State law, which is not reduced to judgment before the date of enactment of this Act may be eligible to receive compensation under such subsection. Presentation by such claimant of a claim for compensation under subsection (a) of this section shall be irrevocable, shall constitute the exclusive relief which may be granted with respect to the damage for which such claim is presented, and shall constitute a waiver by such claimant of any right to relief to which such claimant may be entitled under such other Federal or State law with respect to such damage.

(3) Any United States claimant who presents a claim for any damage referred to in subsection (a) of this section, under any other Federal or State law, which is reduced to judgment before the date of the enactment of this Act may be eligible to receive compensation under such subsection. Such claimant may present such judgment to the Secretary. If the Secretary determines that such claimant is entitled to receive compensation under either such subsection, then the Secretary shall offer to pay such compensation, not to exceed the amount of any award made in such judgment, in satisfaction of such judgment. Acceptance of such offer by such claimant shall constitute full satisfaction of such judgment with respect to each claim for any damage which is referred to in subsection (a) of this section and which is merged in such judgment.

By Mr. YOUNG of Alaska:

(Amendment to the amendment offered by Mr. Breaux.)

—Page 40, after line 4, insert the following:

"(4) The amount of any TAP fund surplus not used as an advance payment under section 541(d) shall be rebated by the Secretary directly to the operator of the trans-Alaska oil pipeline for payment, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel."

# APPENDIX III

## STATEMENTS INSERTED IN THE CONGRESSIONAL RECORD AFTER FINAL PASSAGE COMMENTING ON OR CLARIFYING CERTAIN PROVISIONS

[From the Congressional Record, Dec. 2, 1980, p. S15276]

### SUPERFUND LEGISLATION

● Mr. **STAFFORD**. Mr. President, the House of Representatives is now considering that version of the "superfund" legislation passed by the Senate on November 24. During the consideration of that bill here in the Senate, the distinguished Senator from West Virginia, Senator **RANDOLPH**, and I made certain commitments to other Members. For the record, I would like to reaffirm those commitments at this time.

Although I personally considered the addition of an oil title to the superfund bill desirable, the many Senators interested in such a bill could not reach agreement during the short time available on the floor. However, because of the strong interest in an oil spill superfund, Senator Randolph and I agree that it would be an early priority of the Committee on Environment and Public Works next year. I stand by that commitment. Assuming that a toxic chemical superfund becomes law this year, a companion measure covering oil will be placed before the Committee on Environment and Public Works without delay in the next Congress.●

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[From the Congressional Record, Dec. 5, 1980, p. S15781]

● Mr. **TSONGAS**. The purpose of this colloquy is to clarify the intent of an amendment which I offered that was included in the Stafford-Randolph substitute (H.R. 7020) to the "Superfund" legislation **[Sec. 306(c)(3)]**.

My amendment makes those carriers currently subject to section 10921 of title 49, United States Code liable for a civil penalty of $20,000 per violation for failure to comply with that section. It does not extend the Commission's jurisdiction but merely increases the fine. While the Commission has asserted that authority is necessary to transport hazardous wastes, certain firms are challenging that assertion. The amendment is not intended to prejudge pending litigation nor to preclude the Commission from spelling out its jurisdiction in this area.

Mr. **CANNON**. That is also my interpretation of the Senator's amendment.●

[From the Congressional Record, Dec. 12, 1980, pp. S16427-S16428]

## CLARIFICATION ON H.R. 7020

● Mr. RANDOLPH. Mr. President, H.R. 7020, the superfund legislation passed by the Senate on November 24, agreed to by the House on December 3, and signed by President Carter today, contained certain amendments proposed by Senator Tsongas of Massachusetts regarding transportation of hazardous waste materials. **Section 306(c)** of the amended legislation amends section 11901 of title 49, United States Code, by increasing from $500 to $20,000 the maximum civil penalties applicable to persons engaging in transportation of hazardous wastes without complying with section 10921 of title 49, which is the provision of the Interstate Commerce Commission for certain types of motor carrier operation.

As presented by Senator Tsongas and accepted by the floor managers of the legislation, this amendment was not meant to change the types of transportation activity over which the Interstate Commerce Commission has jurisdiction. Whether or not the Interstate Commerce Commission has jurisdiction to regulate the transportation of hazardous waste or other waste materials has not been settled.

The amendment proposed by Senator Tsongas and passed as **section 306(c)** of H.R. 7020 is not intended to resolve that question of Commission jurisdiction. Its only purpose is to increase the maximum civil penalties that can be assessed where a person is found to be in violation of section 10921 with respect to the transportation of hazardous waste. The extent to which persons carrying hazardous waste will be subject to section 10921 is a matter we leave to the courts, or further legislative interpretations.

I should add that, by leaving this question of ICC jurisdiction to the courts, we are certainly not withholding from the public any needed protection with respect to transportation of hazardous waste materials. This activity is already subject to comprehensive safety and other provisions contained in the Hazardous Materials Transportation Act and subtitle C of the Solid Waste Disposal Act. The transportation regulations under the latter legislation have become effective just this past month. The question of whether the Commission has jurisdiction to regulate the transportation of hazardous wastes is not affected by H.R. 7020 as passed last week.

Another matter in connection with H.R. 7020 which deserves clarification has been brought to my attention. The United Steelworkers of America has expressed concern that the exclusion of workplace exposure-related claims in **section 101(22)(A)** of the act not be construed to limit any rights workers have under State workers' compensation and third party liability law.

I want to make it clear that **section 302** of H.R. 7020 provides that nothing in the act affects or modifies in any way rights or liabilities under other State or Federal law, including common law. This provision definitely preserves workers' rights in State workers' compensation and third party liability laws. **Section 101(22)(A)** only addresses new rights created under H.R. 7020.

I ask that a letter from John J. Sheehan, legislative director of the United Steelworkers of America, be included at this point in the Record.

The letter follows:

UNITED STEELWORKERS OF AMERICA,
*Washington, D.C., November 25, 1980.*

Hon. JENNINGS RANDOLPH,
*Chairman, Environment and Public Works Committee, Dirksen Senate Office Building, Washington, D.C.*

DEAR SENATOR RANDOLPH: The United Steelworkers of America is concerned over certain language in the recently approved Hazardous Substances Releases, Liability and Compensation Act (Superfund) which may adversely affect workers rights under state workers' compensation and other laws.

**Section 101(22)(A)** excludes from the definition of "release"any "release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons." While the intent of the Act is not to modify or mitigate any rights which workers currently have under existing state laws, the language of **Section 101(22)(A)** is very unclear as to the status of these rights. It appears that under **Section 101(22)(A)** workers may be precluded from exercising their rights under state workers' compensation and third party liability.

It is our understanding, however, that **Section 302(d)** of the Act would correct any deficiencies in **Section 101(22)(A)** by holding that "nothing in this Act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants." If this provision does in fact preserve all existing workers rights with respect to state workers' compensation and third party liability laws, then we believe that the issue should be further clarified in the legislative history. Indeed, we believe that the Committee report should make it abundantly clear that **Section 101(22)(A)** in no way affects any rights which workers currently have under existing state, federal or common law and that the language in this section is limited exclusively to the provisions of the Act.

We are, of course, prepared to work with your staff on developing adequate and acceptable report language.

Sincerely,

JOHN J. SHEEHAN,
*Legislative Director.*

It may be helpful to further clarify our comments on the national contingency plan, which is required by **section 105** of H.R. 7020, the "superfund" legislation.

**Section 105** of H.R. 7020 requires updating the national contingency plan, originally established under section 311 of the Clean Water Act, to implement new cleanup responsibilities under the superfund. As in the Clean Water Act, the amended plan is published after opportunity for comment, not promulgated as regulations. The plan is intended as guidance—the best thinking at the time of publication—but not as a rigid rule or set of procedures which must be adhered to, when Federal response authorities believe the particular circumstances at the time that they must respond require other procedures or policy in order to protect public health or welfare or the environment. To consider the plan as a rigid limiting document constituting other than guidance would be to make it useless in dealing with emergencies. It is not intended that the nature or content of the plan so bind the implementing Federal agencies as to preclude them from accomplishing the basic purposes of the act.

Because the plan is important guidance to be used in fulfilling the purposes of the act, Senator Stafford and I have indicated our agreement that it would be appropriate to have the plan subject to the legislative veto provision of **section 305.** Of course, such congressional review does not mean that the plan is to be considered a regulation for any other purposes. As with any other executive branch action subject to **section 305**, any congressional veto would be with respect to the revision, as a whole, of the plan under this act, rather than individual aspects of the revised plan.

In revising the plan to guide decisions on whether or when to respond and whether particular remedial measures may be cost-effective, it is appropriate, to the extent practicable and with deference to the threat to public health, welfare or the environment, to consider the benefits and to consider the costs of such action. Indeed, this is the purpose of requiring in **section 104** that certain decisions strive to strike a balance between considerations of public health and welfare on the one hand and the availability of money from the fund to respond to threats at other sites as well as the particular one under consideration.

This is really only commonsense. It is certainly not intended that such considerations of balance be allowed to become cumbersome analytic processes. Formalized benefit/cost analyses would only preclude timely response and would be deceiving, since the current state of science is unable to provide with sufficient certainty much of the necessary information on benefits, not to mention the costs of inaction.

Mr. STAFFORD. The Senator is correct. I might add that, as Senator HELMS suggested in our earlier colloquy in refering to "considerations of public welfare," the balancing process is to include not only benefits which are susceptible of easy or exact calculation, but those other considerations which are customarily included when the Congress uses the term "welfare." Such intangible or long-term benefits must be considered in weighing whether a particular response or cost is inappropriate.

In other words, the purpose of this bill and the response plan is to protect the public health and welfare in its broadest sense. In protecting those interests, the President is not to be constrained by a rigid or inflexible construction of this language concerning cost effectiveness or considering costs or benefits.●

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[From the Congressional Record, Dec. 12, 1980, p. H12400]

## CLARIFICATION OF CERTAIN TAX PROVISIONS CONTAINED IN H.R. 7020, SUPERFUND BILL, AS AMENDED BY THE SENATE

The SPEAKER. Under a previous order of the House, the gentlemen from Oregon (Mr. Ullman) is recognized for 5 minutes.

● Mr ULLMAN. Mr. Speaker, on behalf of Mr. Conable and myself, I want to clarify several questions that have been raised with regard to the intent of Congress with respect to the tax provisions of the superfund legislation, H.R. 7020. One issue involves the tax on petroleum and three questions deal with the tax on chemicals. This statement elaborates what we believe to be the intent of Congress with respect to these issues.

### STATEMENT [Sec. 211]

1. Section 4612 of the Code imposes a tax on natural gasoline derived from natural gas. It has been asked whether it is correct to assume that the tax is, as in the case of crude oil, imposed at the refinery gate and not at the natural gas processing plant where such gasoline is separated from the natural gas.

Generally, the petroleum tax on products other than imports imposed under section 4611(a) is on crude oil (including natural gasoline and crude oil condensates) received at a U.S. refinery, which is defined in the statute as any facility in the United States at which crude oil is refined. The petroleum tax also may be imposed under 4611(b) on the use or exportation of crude oil, if no tax has been imposed on the oil upon its receipt at a refinery. Thus, if crude oil is refined at the natural gas processing plant, then the plant would be treated as a refinery and the natural gasoline produced at such a plant would be taxable when produced. However, if crude oil is not refined at a natural gas processing plant, then the natural gasoline would be subject to a tax only when received at a U.S. refinery, used, or exported.

2. With respect to taxation of petrochemical feedstocks, Section 4661(a) imposes a tax on any listed chemical sold by a manufacturer, producer or importer of the substance. Section 4662(c) makes use of such substance equivalent to sale for taxation purposes. It has been asked whether it is correct to assume that these two sections are to be read together and are intended to provide equivalent tax treatment to firms which manufacture and sell, and those which manufacture and use, such feedstocks.

Section 4661(a) imposes a tax on any taxable chemical sold by the manufacturer, producer, or importer of the chemical. Section 4662(c) states that if a manufacturer, producer or importer uses the chemical, then this person would be liable for the tax in the same manner as if the chemical were sold by the person. Thus, either sale or use of the taxable chemical by the manufacturer, producer, or importer would generate a tax liability.

3. A question has also arisen regarding the application of the excise tax on chemicals to gasoline and other refinery products. As I understand the petroleum industry, oil which is received at a refinery is first distilled to produce a light hydrocarbon stream which eventually is blended with other products and sold as gasoline. The products from the distillation process may then be further processed in a catalytic cracker or in a reformer. The cracking and reformation processes produce, in part, mixed streams of light hydrocarbons which are blended with distillates and sold as gasoline. The light hydrocarbon streams produced in the distillation, cracking, or reformation processes may contain various amounts of substances, such as benzene, butadiene and xylene, which are listed as taxable chemicals in title II of H.R. 7020. We further understand that before any of these substances can be used for chemical processes such as the production of pesticides, or other hazardous substances they must be isolated from the hydrocarbon stream. The question which has arisen is whether the Ways and Means Committee in drafting the original superfund tax intended to tax specified chemicals present in the gasoline refining process if those chemicals are not isolated for chemical use but remain instead in the gasoline.

The tax in H.R. 7020 is imposed upon the sale or use of any taxable chemical by the manufacturer, producer or importer of that taxable chemical; the relevant language is contained in both the House and Senate versions of the bill. If the process of producing gasoline and of isolating particular substances is as it has been described to us, then we would say that the Ways and Means Committee did not intend to tax named substances present in mixed hydrocarbon streams used to produce gasoline. When a refinery operates a distillation, cracking, or reformation process for the purpose of obtaining a light hydrocarbon stream that will be sold as gasoline it cannot be said to be engaged in the manufacture or production of any taxable chemical. In contrast, if that gasoline is not sold but is further processed to isolate one or more taxable chemicals, then the refiner is the producer of those chemicals and the excise tax on chemicals would be imposed.

It should also be noted that although an importer of gasoline is not importing a named taxable chemical it is importing a petroleum product and would be subject to the excise tax on petroleum provided for in H.R. 7020.

4. The superfund legislation generally imposes a tax under section 4661 of the Code on the sale or use of certain chemicals. However, section 4662(b)(1) states that methane or butane are treated as a taxable chemical only if "used otherwise than as a fuel." These words appear in both the House and Senate versions of H.R. 7020.

It has been indicated that one important way in which butane is used is as a component of gasoline and other fuels produced in an oil refinery. As we understand it, butane is dissolved (without any change in its chemical composition) into the gasoline to enhance the overall performance of the gasoline, which is, of course, used as a fuel. The specific question which arises is whether, in this case, the butane has been used "otherwise than as a fuel" and thus, whether such use is subject to tax.

If the fact with respect to gasoline production are as represented above—that the chemical composition of the butane does not change and that it is merely dissolved in or mixed with other substances, all of which are used as a fuel, then the Congress did not intend that this butane should be subject to the tax. If, in some other situation, the butane is repeatedly mixed with other substances in an extended sequence of mixtures or its chemical composition is changed, then it is intended that it be "used otherwise than as a fuel," and thus, subject to the tax at that point.●

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[From the Congressional Record, Dec. 13, 1980, pp. S16645-S16646]

## TITLE II OF H.R. 7020

● Mr. MOYNIHAN. Mr. President, I would like to provide for the RECORD a summary of title II of the hazardous waste cleanup bill, H.R. 7020, passed by the Senate on November 24, 1980.

Title II generally parallels the form and substance of the financing titles of the House-passed superfund bills, H.R. 85 and H.R. 7020. The title establishes a hazardous substance response trust fund, financed from appropriations (one-eighth) and from excise taxes on oil, petrochemical feedstocks and specified inorganic substances (seven-eighths). The rates of the excise taxes were established so as to provide $1.38 billion to be raised over 5 years. The rationale for the excise taxes on oil, petrochemical feedstocks and inorganic substances is described in the July 11, 1980, report of the Committee on Environment and Public Works of the U.S. Senate which accompanied S. 1480 (pages 15-17 and 19-22) and is discussed here.

Financing the fund primarily from taxes paid by industry is the most equitable and rational method of broadly spreading the costs of past, present and future releases of hazardous substances among all those industrial sectors and consumers who benefit from such substances. The concept of a fund financed largely by appropriations was not adopted. A largely appropriated fund establishes a precedent adverse to the public interest—it tells polluters that the longer it takes for problems to appear, the less responsible they are for paying the consequences of their actions, regardless of the severity of the impacts. Too often the general taxpayer is asked to pick up the bill for problems he did not create; when costs can be more appropriately allocated to specific economic sectors and consumers, such costs should not be added to the public debt.

The tax system was adopted after extensive investigation of alternatives. This tax system provides for best balance of equity, rapid implementation, legal defensibility, administrative simplicity, and a minimum of any adverse economic and environmental impacts. The taxes are imposed at the beginning of the commercial chain of production, distribution, consumption, and disposal of hazardous substances. The tax is assessed on substances which are either hazardous themselves or are the basic building blocks (primary petrochemicals, inorganic raw materials and petroleum oil) used to make almost all major hazardous substances.

By collecting a tax at the beginning of the production cycle, this tax system uses the efficiency of the marketplace to automatically and broadly distribute the risks associated with chemicals through taxes on all industrial sectors in the chain of production, transportation, use and disposal of hazardous substances. This is a more effective mechanism than distributing risks through the rules and regulations of a Federal agency and it is fully consistent with the spirit of regulatory reform.

The 42 substances subject to the tax meet at least two or more of the following criteria: First, they are inherently hazardous or hazardous in a number of forms (intermediates or final products); second, they are hazardous in some form if released; third, hazardous wastes are generated in producing them or their intermediate or final products; fourth, they are capable in one or more forms of increasing the hazardous potential of other substances; and fifth, they are produced in significant quantities. A tax may attach to a product even though it is itself environmentally benign, since earlier in the chain of production, distribution, consumption and disposal it used a hazardous substance or later in the chain it will be used to generate a hazardous substance.

Effective April 1, 1981, **section 211** imposes an excise tax of 0.79 cents per barrel on crude oil received at a U.S. refinery and on imported crude oil and petroleum products. The tax, which would be imposed only once on any taxable barrel of petroleum, will be paid by the refiner or importer of the petroleum.

The excise tax on oil and petroleum products will terminate on September 30, 1985. The tax will be suspended during calendar year 1984 or 1985, if on September 30, 1983 or 1984, respectively, the unobligated fund balance exceeds $900 million and is expected to exceed $500 million on the following September 30 (even if the excise tax is suspended for the calendar year in question). If any time prior to September 30, 1985, the sum of all excise taxes collected from oil and specified petrochemical feedstocks and inorganic substances exceed $1.38 billion, then at such time the authority to collect taxes ceases, unless reauthorized by Congress.

Effective April 1, 1981, **section 211** imposes an excise tax on the following specified petrochemical feedstocks and inorganic substances:

| In the case of: | *The tax is the following amount per ton:* |
|---|---|
| Acetylene | $4.87 |
| Benzene | 4.87 |
| Butane | 4.87 |
| Butylene | 4.87 |
| Butadiene | 4.87 |
| Ethylene | 4.87 |
| Methane | 3.44 |
| Naphthalene | 4.87 |
| Propylene | 4.87 |
| Toluene | 4.87 |
| Xylene | 4.87 |
| Ammonia | 2.64 |
| Antimony | 4.45 |
| Antimony trioxide | 3.75 |
| Arsenic | 4.45 |
| Arsenic trioxide | 3.41 |
| Barium sulfide | 2.30 |
| Bromine | 4.45 |
| Cadmium | 4.45 |
| Chlorine | 2.70 |
| Chromium | 4.45 |
| Chromite | 1.52 |
| Potassium dichromate | 1.69 |
| Sodium dichromate | 1.87 |

| In the case of: | The tax is the following amount per ton: |
|---|---|
| Cobalt | 4.45 |
| Cupric sulfate | 1.87 |
| Curpic oxide | 3.59 |
| Cuprous oxide | 3.97 |
| Hydrochloric acid | .29 |
| Hydrogen fluoride | 4.23 |
| Lead oxide | 4.14 |
| Mercury | 4.45 |
| Nickel | 4.45 |
| Phosphorus | 4.45 |
| Stannous chloride | 2.85 |
| Stannic chloride | 2.12 |
| Zinc chloride | 2.22 |
| Zinc sulfate | 1.90 |
| Potassium hydroxide | .22 |
| Sodium hydroxide | .28 |
| Sulfuric acid | .26 |
| Nitric acid | .24 |

The chemical excise tax will be paid by the manufacturer, producer, or importer of taxable substances. The tax would only be paid once on any taxable substance if used in the manufacture of another taxable substance.

Under **section 211**, methane and butane, from whatever source derived (natural or synthetic), will be taxable only when used for some purpose other than as a fuel. Nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia will be exempt from the tax when used in the manufacture or production of fertilizer. Nonfertilizer production usage of these substances are not exempt from taxes. The term "fertilizer production industry" as used in the bill is to read to include those activities and products described and set forth in the Standard Industrial Classification Manual (OMB, 1972 Edition) and identified therein as SIC code Nos.: 1474, 1475, 2873, 2873112, 2874, 2874185, 28193, 2810922, and 2619331.

The excise tax expires on September 30, 1985. The tax could be suspended during 1984 or 1985 under the same rule that applies to suspension of the tax on crude oil.

**Section 221** establishes the hazardous substance response trust fund. The trust fund will be constituted from appropriations and from receipts from the excise taxes imposed by title II, in addition to penalties levied by the President, moneys recovered in legal suits from responsible parties, punitive damages assessed under title I, income on invested moneys from the fund, and transfers immediately upon passage from the fund established by the Clean Water Act (section 311) which is used to respond to discharges into navigable waters. Moneys credited to the fund in any fiscal year remain available until expended.

The trust fund can be used only for the purposes described in **section 111**, excluding **subsection 111(j)**. These purposes include response costs; claims eligible, but unsatified, under section 311 of the Clean Water Act; Federal or State government claims for injury to, or destruction or loss of natural resources; and related costs described in **section 111(c)**. Third party damage claims are not compensable under this act, except as provided above for natural resources.

The bill requires that 85 percent of the excise taxes and appropriations paid into the trust fund be reserved for reponse costs, related costs described in **section 111(c)**, and repayment of any borrowed moneys. The remaining 15 percent is available for payment of claims for damages to natural resources. If such claims against the fund exceed the balance available for payment of those claims, then claims shall be paid in full in the order in which they were received **[Sec. 222(b)]**. Unpaid claims would be deferred until funds become available.

The trust fund would be permitted to borrow from the U.S. Treasury under certain limitations **[Sec. 223(c)]**. First, total outstanding borrowings at any time may not exceed tax receipts anticipated for the following year. Second, after March 1983, borrowing for response cost is permitted only in the event of a catastrophic release. Third, borrowing for damage claims is restricted to one-third of the following year's anticipated tax receipts. Finally, all outstanding advances must be repaid by September 30, 1985.

Title II also establishes a separate postclosure liability trust fund **[Sec. 232]**. The fund could assume completely the liability of owners and operators of hazardous waste disposal facilities granted permits and properly closed as provided in **section 107(k)** of the act. The fund could pay for monitoring and maintaining such closed sites and assume liability for all damages and response costs of such sites only if the facility is found to meet the requirements of **section 107(k)**.

The postclosure liability fund will be financed primarily by a tax of $2.13 per dry weight ton of hazardous waste which will remain at the hazardous waste disposal facility after closure **[Sec. 231]**. The Internal Revenue Service is expected to interpret "dry weight ton" in the context as the delivered weight of hazardous waste excluding the weight of water. The tax will be paid by owners or operators of hazardous waste disposal facilities with a permit or accorded interim status under section 3005 of the Solid Waste Disposal Act. The tax will not be collected in any calendar year if on September 30 of the preceding year the unobligated fund balance exceed $200 million. Tax collection will be initiated 3 years following enactment.

As the member of the Finance Committee who assumed responsibility for the drafting of the tax title, I want to be absolutely certain that our committee's distinguished chairman, Senator LONG, finds the above summary to be consistent with his understanding of the legislation.

Mr. LONG. The summary of title II of H.R. 7020, provided by the Senator from New York is consistent with my understanding of the legislation.●

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[From the Congressional Record, Dec. 16, 1980, p. S16681]

## CLARIFICATION OF CERTAIN TAX PROVISIONS CONTAINED IN H.R. 7020, THE SUPERFUND BILL, AS AMENDED BY THE SENATE

● Mr. LONG. Mr. President, on behalf of Senator DOLE and myself I want to clarify several questions that have been raised with regard to the intent of Congress with respect to the tax provisions of the superfund legislation, H.R. 7020. One issue involves the tax on petroleum and three questions deal with the tax on chemicals. This statement elaborates what we believe to be the intent of Congress with respect to these issues.

The statement follows:

[NOTE: The statement is identical to Mr. Ullman's statement of December 12, 1980. See p. 346 of this volume.]

# APPENDIX IV

## BIBLIOGRAPHY OF CONGRESSIONAL DOCUMENTS, 1975-1980

NOTE.—Many of the descriptive notes and virtually all of the page references are from Congressional Information Service, Inc. CIS annual, 1975-1980. Washington, Congressional Information Service, Inc., 1976-1981. Documents from the 96th Congress reproduced in this legislative history are indicated by an asterisk (*).

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——— Toxic Substances Control Act authorization; report together with minority and additional views to accompany H.R. 2606 (including cost estimate of the Congressional Budget Office). Washington, U.S. Govt. Print. Off., 1979, 19 p. (96th Cong., 1st sess. House. Report No. 96-174)

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"Serial No. 96-5"

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# 95th CONGRESS

## HEARINGS

U.S. Congress. House. Ad Hoc Select Committee on Outer Continental Shelf. Outer Continental Shelf Lands Act Amendments of 1977, part 1. Hearings, 95th Cong., 1st sess., on H.R. 1614 a bill to establish a policy for the management of oil and natural gas in the outer continental shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes. Hearings held March 3–June 9, 1977. Washington, U.S. Govt. Print. Off., 1977. 872 p.

Oil Spill Liability Fund, p. 156–160, 670–697, 771–782.

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U.S. Congress. House. Committee on Appropriations. Subcommittee on Transportation Appropriations and four other subcommittees. Supplemental appropriations for fiscal year 1977, part 4. Hearings, 95th Cong., 1st sess. Feb. 7–28, 1977. Washington, U.S. Govt. Print. Off., 1977. 1352 p.

Coast Guard supplemental appropriation for oil spill response, p. 877–885.

U.S. Congress. House. Committee on Government Operations. Subcommittee on Environment, Energy, and Natural Resources. Oil-spill contingency plan. Hearings, 95th Cong., 1st sess. Feb. 2–3, 1977. Washington, U.S. Govt. Print. Off., 1977. 393 p.

U.S. Congress. House. Committee on Government Operations. Subcommittee on Government Activities and Transportation. Coast Guard efforts to prevent oil pollution caused by tanker accidents. Hearings, 95th Cong., 1st sess. March 21–23, 1977. Washington, U.S. Govt. Print. Off., 1977. 551 p.

——— Oil tanker pollution. Hearings, 95th Cong., 2d sess. July 18–20, 1978. Washington, U.S. Govt. Print. Off., 1978. 369 p.

U.S. Congress. House. Committee on Interstate and Foreign Commerce. Subcommittee on Consumer Protection and Finance. Toxic Substances Control Act Amendments. Hearings, 95th Cong., 2d sess., on H.R. 9616 a bill to establish a compensation system for victims of toxic substance pollution, and S. 1531 an act to amend the Toxic Substances Control Act to establish a program of assistance to the States for the protection and indemnification of individuals injured in their business or person by chemical substances, to establish a chemical emergency response team, to increase the authorization for appropriations, and for other purposes. Hearings held March 7–July 25, 1978. Washington, U.S. Govt. Print. Off., 1978. 402 p.

"Serial No. 95–150"

U.S. Congress. House. Committee on Interstate and Foreign Commerce. Subcommittee on Oversight and Investigations. Oversight—Resource Conservation and Recovery Act. Hearing, 95th Cong., 2d sess. Oct. 30, 1978. Washington, U.S. Govt. Print. Off., 1979. 484 p.

EPA's implementation of RCRA, focusing on management and disposal of hazardous wastes.

"Serial No. 95–183"

U.S. Congress. House. Committee on Interstate and Foreign Commerce. Subcommittee on Transportation and Commerce. Resource Conservation and Recovery Act—oversight. Hearings, 95th Cong., 2d sess. March 7–9, 1978. Washington, U.S. Govt. Print. Off., 1978. 276 p.

Includes implementation of RCRA Subtitle C.

"Serial No. 95–124"

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Coast Guard and Navigation. Coast Guard miscellaneous—part 2. Hearings, 95th Cong., 2d sess. March 21, April 7, June 6, July 3 (held in Long Beach, and Santa Barbara, Calif.), July 7 (held in Seattle, Wash.), and Sept. 21, 1978. Washington, U.S. Govt. Print. Off., 1978. 451 p.

H.R. 188 to permit Coast Guard to take measures against pollution in international waters, p. 3–8, 11–42; Coast Guard and other response to the Feb. 27, 1978, Chesapeake Bay oil spill, p. 45–133; and Coast Guard oil spill cleanup operations in Washington State waters, p. 278–291.

"Serial No. 95–49"

——— Federal Boat Safety Act—Coast Guard authorization, fiscal year 1979. Hearings, 95th Cong., 2d sess. Feb. 24, 28, and March 2, 1978. Washington, U.S. Govt. Print. Off., 1978. 659 p.

Adequacy of Coast Guard resources for oil spill prevention and cleanup, and other missions, p. 184–377.

"Serial No. 95–28"

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U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Coast Guard and Navigation, and Subcommittee on Merchant Marine. Coast Guard miscellaneous. Hearings, 95th Cong., 1st sess. May 18, July 18 (held in New York,

N.Y.), August 15 (held in Hyannis, Mass.), Sept. 13-15, 1977. Washington, U.S. Govt. Print. Off., 1977. 457 p.

Coast Guard contingency plan and capabilities for responding to major marine accidents in Port of N.Y., p. 64-92; and Cape Cod Coast Guard oil spill prevention and cleanup, focusing on *Argo Merchant* and *Bouchard 65* oil spills, p. 125-213.

"Serial No. 95-14"

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Research on impact of contaminants on marine resources, and problems caused by ocean pollutants in New York Bight and Puget Sound, p. 55-139.

"No. 21"

——— Oil spill recovery technology. Hearings, 95th Cong., 1st sess. June 28-29, 1977. Washington, U.S. Govt. Print. Off., 1978. 319 p.

"No. 40"

U.S. Congress. Senate. Committee on Appropriations. Subcommittee on Transportation Appropriations. Coast Guard oilspill cleanup program. Hearing, 95th Cong., 2d sess., held in Annapolis, Md., April 28, 1978. Washington, U.S. Govt. Print. Off., 1978. 135 p.

Focuses on oil spill problems in Chesapeake Bay.

——— Coast Guard's resource needs for responding to oil spills. Hearing, 95th Cong., 2d sess. March 22, 1978. 101 p.

——— Department of Transportation and related agencies appropriations for fiscal year 1978, part 3. Hearings, 95th Cong., 1st sess., on H.R. 7557. Feb. 24-March 14, 1977. Washington, U.S. Govt. Print. Off., 1977. 1016 p.

Coast Guard request for oil spill pollution fund contribution, and other programs, p. 261-354.

——— Department of Transportation and related agencies appropriations for fiscal year 1979, part 3. Hearings, 95th Cong., 2d sess., on H.R. 12933. Feb. 23-May 2, 1978. Washington, U.S. Govt., Print. Off., 1978. 1352 p.

Proposes oil pollution liability and compensation fund, p. 223-376.

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U.S. Congress. Senate. Committee on Commerce, Science, and Transportation. 1978 IMCO Protocols. Hearing, 95th Cong., 2d sess. April 5, 1978. Washington, U.S. Govt. Print. Off., 1978. 219 p.
International agreements relating to tanker safety and oil pollution prevention.
"Serial No. 95-80"

——— Oil spill liability and compensation. Hearings, 95th Cong., 1st sess., on S. 121, S. 182, S. 687, S. 898, and S. 1187. June 9, 10, and 20, 1977. Washington, U.S. Govt. Print. Off., 1977. 346 p.
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——— Recent tanker accidents: Legislation for improved tanker safety, part 2. Hearings, 95th Cong., 1st sess., on S. 182, S. 568, S. 682, S. 715, and S. 898. March 8-18, 1977. Washington, U.S. Govt. Print. Off., 1977. 499-1027 p.
"Serial No. 95-4"

——— Tanker safety in Alaska, part 3. Hearings, 95th Cong., 1st sess., on S. 182, S. 568, S. 682, S. 715, and S. 898. Hearings held in Juneau, Alaska, April 28, and Anchorage, Alaska, April 29, 1977. Washington, U.S. Govt. Print. Off., 1977. 1029-1113 p.
Oil pollution liability and compensation, local effects.

U.S. Congress. Senate. Committee on Energy and Natural Resources. Outer Continental Shelf Lands Act Amendments of 1977. Hearings, 95th Cong., 1st sess., on S. 9. March 15, 18, April 19, 25, 1977. Washington, U.S. Govt. Print. Off., 1977. 751 p.
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"Publication No. 95-44"

U.S. Congress. Senate. Committee on Energy and Natural Resources. Subcommittee on Energy Production and Supply. The West Hackberry strategic petroleum reserve salt dome storage site fire. Hearing, 95th Cong., 2d sess., held in Lake Charles, La., Oct. 7, 1978. Washington, U.S. Govt. Print. Off., 1979. 97 p.
Sept. 1978 fire and oil spill.
"Publication No. 95-173"

U.S. Congress. Senate. Committee on Environment and Public Works. Subcommittee on Environmental Pollution. Federal Water Pollution Control Act Amendments of 1977 (New Orleans, La.), part 6. Hearing, 95th Cong., 1st sess., held in New Orleans, La., June 27, 1977. Washington, U.S. Govt. Print. Off., 1977. 446 p.
Regulations of toxic discharges under FWPCA, innovative pollution control technology, desirability of differentiation between crude oil and other hazardous substances, p. 9-92.
"Serial No. 95-H25"

——— Federal Water Pollution Control Act Amendments of 1977 (Washington, D.C.), part 8, Hearing, 95th Cong., 1st sess. June 21-23, 1977. Washington, U.S. Govt. Print. Off., 1977. 619 p.
Adequacy of FWPCA to control toxic substances discharges, health hazards associated with toxic contamination of drinking

water, and evidence of widespread carcinogenic contamination of water supplies, p. 443–619.

"Serial No. 95–H25"

——— Federal Water Pollution Control Act Amendments of 1977 (Washington, D.C.), part 9, Hearing, 95th Cong., 1st sess. June 28–July 1, 1977. Washington, U.S. Govt. Print. Off., 1977. 725 p.

Adequacy of FWPCA sec. 311 provisions relating to oil spill and hazardous substance pollution prevention and control, p. 69–218, 515–578, 595–613, 619–665.

"Serial No. 95–H25"

——— A proposal to amend section 311 of the Clean Water Act of 1977. Hearing, 95th Cong., 2d sess. Oct. 5, 1978. Washington, U.S. Govt. Print. Off., 1978. 39 p.

EPA request to amend CWA sec. 311 provisions authorizing sanctions for oil and hazardous substance spills, responding to a Federal court decision enjoining EPA implementation or enforcement of its proposed sec. 311 regulations.

"Serial No. 95–H77"

——— Safe Drinking Water Act oversight. Hearing, 95th Cong., 2d sess. July 18, 1978. Washington, U.S. Govt. Print. Off., 1978. 356 p.

Organic chemical contamination of drinking and ground water supplies, its carcinogenicity and health costs, and costs of control via drinking water regulations, p. 18–68, 216–279, 291–356.

"Serial No. 95–H70"

——— To establish a comprehensive oil pollution liability and compensation law. Hearings, 95th Cong., 2d sess., on S. 2900, a bill to provide for compensation for damages and cleanup costs caused by discharges of oil and hazardous substances, to establish a liability fund, and for other purposes, and other related bills. Hearings held April 17, 18 and May 24, 1978. Washington, U.S. Govt. Print. Off., 1978, 834 p.

"Serial No. 95–H55"

### Reports, Committee Prints, and Documents

U.S. Congress. House. Ad Hoc Select Committee on the Outer Continental Shelf. Outer Continental Shelf Lands Act Amendments of 1977; report together with additional, supplemental, dissenting, minority, and additional minority views to accompany H.R. 1614 (including cost estimate of the Congressional Budget Office). Washington, U.S. Govt. Print. Off., 1977, 323 p. (95th Cong., 1st sess. House. Report No. 95–590)

Reported bill includes provisions to establish an Offshore Oil Spill Pollution Compensation Fund and a Fisherman's Contingency Fund for damages resulting from oil spills.

U.S. Congress. House. Committee on Government Operations. Coast Guard efforts to prevent oil pollution caused by tanker accidents; report together with additional views. Washington, U.S. Govt. Print. Off., 1977, 79 p. (95th Cong., 1st sess. House. Report No. 95–719)

U.S. Congress. House. Committee on Interior and Insular Affairs. Subcommittee on Special Investigations. Trans-Alaska oil pipeline safety features. Washington, U.S. Govt. Print. Off., 1977, 6 p.

To protect adjacent wilderness area from oil spillage.

At head of title: 95th Cong., 1st sess. Committee print No. 5.

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Oil Pollution Liability and Compensation Act; report together with additional views to accompany H.R. 6803 (including cost estimate of the Congressional Budget Office). Washington, U.S. Govt. Print. Off., 1977, 66 p. (95th Cong., 1st sess. House. Report 95-340, part 1)

U.S. Congress. House. Committee on Public Works and Transportation. Data relating to H.R. 3199 (Clean Water Act of 1977). Washington, U.S. Govt. Print. Off., 1977, 9 p.

Contains tables of toxic pollutants pursuant to CWA sec. 307.

At head of title: 95th Cong., 1st sess. Committee print.

"(95-30)"

U.S. Congress. Senate. Committee on Commerce, Science, and Transportation. Oil pollution liability and compensation; report on S. 2083 to establish a single, comprehensive legal regime governing liability and compensation for damages and cleanup costs caused by oil pollution and for other purposes. Washington, U.S. Govt. Print. Off., 1977, 72 p. (95th Cong., 1st sess. Senate. Report No. 95-427)

U.S. Congress. Senate. Committee on Energy and Natural Resources. Outer Continental Shelf Lands Act Amendments of 1977; report together with minority views to accompany S. 9. Washington, U.S. Govt. Print. Off., 1977, 228 p. (95th Cong., 1st sess. Senate. Report No. 95-284)

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## 94TH CONGRESS

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## WITH A COMPARISON OF SECTIONS OF PUBLIC LAW 96-510, S. 1480, H.R. 7020, AND H.R. 85

## COMPARISON OF SECTIONS OF PUBLIC LAW 96-510, S. 1480, H.R. 7020, AND H.R. 85

| | Public Law 96-510 | S. 1480, as reported | H.R. 7020, as passed by the House* | H.R. 7020, as reported by the Committee on Interstate and Foreign Commerce | H.R. 85, as passed by the House | H.R. 85, as reported by the Committee on Merchant Marine and Fisheries | H.R. 85, as reported by the Committee on Public Works and Transportation** | H.R. 85, as reported by the Committee on Ways and Means |
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*The Committee on Ways and Means reported a Title II (the Hazardous Waste Revenue Act of 1980) for H.R. 7020 which offered an alternative scheme of taxation and fund establishment to that contained in the Interstate and Foreign Commerce Committee version. The Ways and Means language was accepted by the House and can be identified by the 3-digit numbers beginning with "2" in this column.

It is apparent from the debate of September 23, 1980, that the intent of the House was to adopt the Ways and Means provisions regarding the imposition of taxes and the creation of the fund. But, inadvertently, the Commerce Committee's version was also passed and two tax and fund schemes appear in the engrossed bill forwarded to the Senate.

**Only Titles III and IV of H.R. 85 (relating to hazardous substance spills) appear in this column. The Committee on Public Works and Transportation also reported the same Titles I and II of H.R. 85 (relating to oil spills) as the Merchant Marine and Fisheries Committee. While Public Works made a few changes in Titles I and II, they do not affect this table.

***These two provisions were passed as part of the Solid Waste Disposal Act Amendments of 1980, Public Law 96-482.

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